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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.782 OF 2016

Sadam Abdul Hamid Mujawar and anr Applicants

V/s.

The State of Maharashtra Respondent

Mr. Satish Borulkar, I/by Mr. S.V. Chaugule, for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 17th JUNE, 2016.

P.C. :

1. The applicants/accused, in Crime No.148 of 2015, for the offence punishable under Sections 307, 326, 143, 144, 147, 149, 504, 506, 120(b) of the Indian Penal Code, registered with Alibag Police Station, District: Raigad, are seeking bail.

2. Heard the learned counsel appearing for the applicants. By placing reliance on the judgment in the matter of **Neelam Bahal and anr -vs- State of Uttarakhand**, reported in **(2010), 2 SCC, 229**, learned counsel argued that for making out offence punishable under Section 307

of Indian Penal Code, certificate of Doctor showing that the injuries are dangerous and they may cause death of a person is essential. He further argued that the injury certificates of injured in this case show that they had sustained grievous injuries, but the Doctor has not certified that the injuries were sufficient to cause death of the victims. He further argued that as there is no certificate showing potential of injuries to cause death, no offence punishable under Section 307 of IPC is made out. He further argued that it cannot be said that there was intention on the part of the applicants to cause death. No recovery was made from applicant Azharoodin.

3. As against this, the learned APP argued that the offence alleged is serious and injury certificates placed on record show that serious injuries were caused to the victims. The perusal of F.I.R. goes to show that the incident of alleged assault on informant Aniket and his two associates on 15.10.2015, was preceded by the incident dated 14.10.2015.

4. On 14.10.2015, the informant Aniket had attempted to intervene when the present applicant alongwith co-accused Nizam were assaulting the person named Rane.

5. On 15.10.2015, as seen from the papers of investigation that informant Aniket accompanied by friend Mayur Sawant and Rohit Gurav

went to Bamangaon for celebrating the birthday of Haresh Kawale. At the time of dinner, Kedar @ Ramdeo Baba warned them that they should not have intervened in the assault dated 14.10.2015. On protest by the informant, co-accused Kedar made a telephonic call and in their return journey, the informant and his friends were accosted by said Kedar, who was accompanied by present applicants Sadam Abdul Hamid Mujawar and Azaruddin as well as Nizam. The F.I.R. as well as statements of injured go to show that the applicant Sadam picked up quarrel with the informant by questioning him as to why he intervened in the assault on Rane. Thereafter co-accused Nizam gave blow of chopper on the stomach of informant Aniket. The applicant Sadam gave another blow on stomach by means of chopper. When Rohit tried to intervene, applicant Azharoodin caught hold injured Mayur from behind and Nizam gave blow of chopper on his chest.

6. The statement of Mayur Sawant reiterated the mode and manner of assault. He further stated that the applicant Azaroodin and co-accused Nizam gave blow of sharp edged weapon on his stomach.

7. The injury certificate shows that informant Aniket suffered two stab injuries, one on his right iliac fossa and another on left lumber region. Mayur suffered two grievous stab injuries, one on right gastric region and another on right lumber region. Rohit suffered grievous stab injuries on left

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8. It is well settled that the intention coupled with overtact makes offence punishable under Section 307 of the Indian Penal Code and for that matter even causing of simple injury also is not required. Therefore, I find no substance in the contention of the learned counsel for the applicant that as he Doctor has not certified the injuries to be sufficient to cause death, the offence under Section 307 is not made. In case in hand the nature of weapon and seats of injuries are sufficient to infer that the act was done with intention of causing death of injured. The chest and abdomen were selected for giving blows by sharp edged weapon.

9. Applicant Saddam Abdul is stated to have criminal antecedents. In the past he is stated to have been involved in Crime No.97 of 2001 registered with Alibag Police Station.

The manner in which the incident has happened is required to be noted. On the earlier day the informant tried to pacify the applicants and co-accused Nizam and on the very next day, he as well as his associates were murderously assaulted by applicants. In this situation the possibility of repetition of similar offence and tampering of evidence of prosecution by applicants cannot be ruled out. The ruling so cited has no application to the instant case. No case for bail is made out as the offence is punishable with life imprisonment because of causing grievous hurt to

the victims during an attempt to commit their murder. Hence order.

Order.

Application is rejected.

[A. M. BADAR, J.]