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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.1211 OF 2016

Nishant Mahadev Shivsharan	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Priyal G. Sarda for the applicant.

Mr.J.H. Ramugade, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 23RD JUNE, 2016

P.C. :-

1. The applicant / accused in Crime No.45/2016 for offences punishable under sections 302, 323, 504, 506 read with 34 of the Indian Penal Code registered with Mandrup Police Station, Solapur at the instance of Mahipal Singh Shekhawat by this application is praying for releasing him bail.

2. Heard the learned counsel for the applicant. By taking me through the charge-sheet and more particularly F.I.R. as well as statement of alleged eye witness Shripalsingh Rathod, it was argued that after initial assault, deceased

Prakash Kumar Vidyadhar Verma ran away. Thereafter, after some time, personnel from the R.T.O. Check post brought him back in injured condition to the Dhaba where the incident took place. It was argued by the learned counsel for the applicant that thereafter deceased Prakash Verma made an oral dying declaration which is reflected in the statement of Dharampal Mahiriya. The learned counsel submitted that from his dying declaration the deceased had not attributed any role to the applicant in the alleged assault which took place thereafter. Therefore, according to the learned counsel for the applicant, as deceased ran away from the Dhaba on his own legs and subsequently he was assaulted by other accused persons, it cannot be said that the applicant / accused is involved in the offence punishable under section 302 of the Indian Penal Code.

3. I have also heard the learned APP who in fact read some portion of the statement of some witness.

4. Perusal of the F.I.R. lodged by eye witness Mahipal Shekhawat goes to show that he as well as deceased Prakash Verma were working as watchmen in road side eatery named

as Gangor Dhaba.

5. As seen from the statements of the informant as well as witness Dharampal Mahiriya, at about 7.30 p.m. on 8th February, 2016 co-accused Ganesh Waghmare came to that road side eatery and hurled abuses in the name of the owner of the eatery. Prakash Verma (since deceased) protested. Then by extending threat to the life of Prakash Verma, co-accused Ganesh Waghmare left that road side eatery and returned with the present applicant as well as co-accused. It is seen from the papers of investigation they all were armed with iron pipes as well sticks. It is seen from the papers of investigation that in subsequent visit of co-accused Ganesh Waghmare accompanied by applicant and another co-accused the informant Mahipalsingh was wrongly assaulted and thereafter, co-accused Ganesh pointed out Prakash Verma (since deceased). Thereafter, applicant and co-accused assaulted Prakash Verma by means of iron pipes and sticks. To save his life, Prakash Verma ran towards adjoining field. It is seen from the papers of investigation that he was assaulted at that place and thereafter was brought back by the personnel from R.T.O. Check post.

6. Witness Dharam Mahiriya states that deceased Prakash Verma made oral dying declaration to him and in that oral dying declaration, he attributed role to co-accused Ganesh and Somanth for assaulting him in the field after the deceased ran away from the eatery.

7. At the stage of considering the matter for bail, the role of each accused cannot be segregated particularly when section 34 of the Indian Penal Code is invoked by the prosecution. It is seen from the attending facts that co-accused Ganesh left the eatery after extending threat to life of deceased Prakash Verma. He came back with his associates, including the present applicant. As initially co-worker was attacked, co-accused Ganesh pointed out deceased Prakash Verma and thereafter deceased Prakash was assaulted by the group of accused persons. This prima facie indicates that the accused persons were harbouring common intention of finishing of Prakash Verma as Prakash Verma had cautioned the main accused Ganesh at the time of hurling abuses.

8. Intention of accused persons, including the present

applicant is writ large if one sees the post mortem report of the deceased. Prakash Verma had suffered 24 ante mortem injuries all over his body. He died because of multiple injuries suffered by him. As such, it cannot be said at this stage the present applicant was not intending the desirous result of committing murder of deceased Prakash Verma. In the result, the application is devoid of merits and therefore, rejected.

(A.M.BADAR, J.)