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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 781 OF 2016
IN
CRIMINAL APPEAL NO. 1118 OF 2015

1. Saiban Sagir Ahmed Shaikh
2. Rajkumar Rajendra Vishwakarma ... Applicants
- vs.
- The State of Maharashtra ... Respondent

Mr. P.V. Vare, Advocate for the applicants.
Mrs. A.S. Pai, APP for the respondent/State.

**CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.**

JULY 5, 2016.

ORAL ORDER: (Per Mrs. V.K. Tahiramani, J.)

Heard both sides.

2. The applicants, who are original accused nos. 3 and 4, were convicted under section 302 r/w. 34 along with original accused nos. 1 and
2. The applicants are now seeking bail.
3. The learned counsel for the applicants submitted that the only role attributed to the applicants is that they had caught hold of deceased

Mohammad Ali Nasir Ali Shaikh and no role of assault has been attributed to any of the applicants. PW-1 Mohammad Azad Nasir Ali Shaikh, who is brother of deceased Mohammad Ali Nasir Shaikh, is an eyewitness to the incident. Mohammad Azad Nasir Shaikh states that on 31st May, 2013 after about 2.45 p.m. when his brother was proceeding to answer the nature call and he was proceeding to his job, at that time, all the accused came from front side. The accused threatened that yesterday he (deceased Mohammad Ali Nasir Shaikh) was talking a lot and they would show him today. Then both the applicants caught hold of the hands of deceased Mohammad Ali Nasir Shaikh. Thereafter original accused nos. 1 and 2, i.e., Sharafatali Shaikh and Mohd. Ubedali took out Khanjar which was kept at their waist and they gave blow of the same on deceased Mohammad Ali Nasir Shaikh.

4. The learned counsel for the applicants submitted that looking to the evidence of the eyewitnesses, i.e., PW-1 Mohammad Azad Nasir Ali Shaikh and PW-8 Zubair Lala Sayyad, it cannot be said that the applicants shared the common intention with original accused nos. 1 and 2 of causing the death of Mohammad Ali Nasir Shaikh. When the applicants caught hold of Mohammad Ali Nasir Shaikh, at that time, original accused nos. 1

and 2 were not armed with weapons, hence there was no way for the applicants to know that original accused nos. 1 and 2 would take out khanjar and assault Mohammad Ali Nasir Shaikh.

5. Looking to the evidence on record, *prima facie* we find merit in this contention. Moreover, during the trial, the applicants were on bail and the statement that they have not misused the liberty granted to them, is not controverted by the prosecution. In this view of the matter, we are inclined to grant bail to the applicants. Hence, the following order:

- (i) The applicants to be released on bail in a sum of Rs.30,000/- each with P.R. Bond and one or two sureties to make up the said amount.
- (ii) During the period that the applicants are on bail, they should report to Shivaji Nagar Police Station, Govandi, Mumbai on first Sunday of every month.

6. The Application is disposed of in above terms.

(MRS. MRIDULA BHATKAR,J.) (MRS. V.K. TAHILRAMANI, J.)