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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1897 OF 2015

Deepak @ Makadi Laxman Upadhyay ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr K.S. Patil for the Applicant.

Ms Rutuja Ambekar, APP for the State.

CORAM : A.S.GADKARI, J.

DATE : 07th January, 2016

P.C.

1) The applicant is seeking bail in CR No. I-8 of 2015, dated 7/3/2015 registered with Nalasopara Police Station, District Palghar under sections 302, 326 read with section 34 of IPC. The FIR dated 7/3/2015 is lodged by Sujeet Manohar Ghosalkar. In his FIR, the complainant has stated that on 6.3.2015 there was a festival of Holi. He was celebrating the said festival in the locality. At that time, the co-accused Pawan Laxman Upadhyay came there and the friend of the complainant namely Rajesh @ Zelya applied the colour to the face of co-accused Pawan. Because of the said act, Pawan got enraged and abused the deceased Rajesh in filthy language. At about 4:30 p.m. when the complainant along with his friend Rajesh @ Zelya (deceased) was

proceeding towards their house, co-accused Pawan who was standing near a Pan shop, started abusing the complainant and deceased Rajesh. The said co-accused Pawan also gave a blow on the head of the complainant with the aid of bamboo stick. After the complainant fell down on the earth, the co-accused Pawan assaulted him with wooden plank. The applicant was holding a wooden rod and he assaulted Rajesh @ Zelya (deceased). Thereafter, the accused persons left the place. In the premise, initially the FIR was lodged under section 326 read with other sections of the IPC. The record discloses that the said Rajesh @ Zelya succumbed to the injuries on 8.3.2015 and, therefore, section 302 of the IPC is added to the said crime.

3) Heard the learned counsel for the applicant and the learned APP for the State. The learned counsel for the applicant submitted that the independent witnesses who were present at the scene of offence have narrated a totally different version than that of the complainant. He submitted that friend of the deceased, namely Sandip Parab in his statement has stated that the deceased was heavily drunk and in fact the deceased challenged the applicant and the co-accused Pawan. He further submitted that the other witnesses have also stated that the deceased and the complainant, in fact, were aggressive and in retaliation the applicant and the co-accused assaulted the deceased and the complainant. He further submitted that there was no intention to cause death of the

deceased and only with a view to protect themselves the applicant and other co-accused assaulted the complainant and the deceased. The learned APP vehemently opposed the application and submitted that the applicant has assaulted the deceased Rajesh @ Zelya to such an extent that he succumbed to the injuries on the next day.

4) I have perused the entire charge-sheet annexed to the present application. Four witnesses whose statements are annexed at page no.40 to 43 have stated that the complainant and the deceased were abusing the applicant and the co-accused Pawan under the influence of alcohol in filthy language and at that time the applicant pleaded with them by saying that they were inebriated and they may have the dialogue on the next day. At that time, the deceased pressed the neck of the co-accused Pawan, and therefore, the applicant with a view to save his brother gave blows with the aid of wooden rod on the person of deceased Rajesh @ Zelya.

5) It appears from the record that the deceased and the complainant were in fact the aggressors and they challenged the applicant and the co-accused Pawan. It further appears that the applicant with a view to save his brother has assaulted the deceased. It prima facie appears that the applicant did not have any intention to commit murder of the deceased. The friend of the deceased, namely, Sandip Parab in his statement has stated that the deceased and the complainant were in an

inebriated condition. After the assault the said witness took the deceased Rajesh to his house and, thereafter the mother of Rajesh took him to the hospital.

6) In view of the above, I am of the opinion, that the applicant has made out a case for releasing him on bail. Hence, the following order :

:ORDER:

(a) The applicant shall be released on bail in CR No. I-8 of 2015 of registered with Nalasopara Police station, District Palghar on his furnishing a PR. bond of Rs. 50,000/- with one or two solvent sureties in the like amount;

(b) After release from jail, the applicant shall attend Nalasopara Police Station, District Palghar on first Monday of every month till conclusion of the trial;

(c) The applicant shall not tamper with the evidence and/or influence the witnesses;

The application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)