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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 421 OF 2017
IN
CRIMINAL APPEAL NO. 344 OF 2017**

Mohammed Saheb Gaus & Ors.

...Applicants

Vs.

The State of Maharashtra

...Respondent

Mr. Shivshankar D. Patil, Advocate for the Applicants

Mrs. G.P. Mulekar, A.P.P. for the State

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.**

DATED : 3RD MAY, 2017

P.C. :

1. Heard both sides.
2. The applicants who are the original accused Nos. 1 to 3 have been mainly convicted under Section 302 r/w Section 34 of IPC.
3. The applicants are now seeking bail. It is the prosecution case that on 21st July, 2012 at about 12.30 p.m the applicants assaulted Tarique Ahmed Kureshi and caused his death. There are

two eye witnesses to the incident. On going through the evidence it shows that the present applicants assaulted Tarique due to which Tarique died. P.W. 5 who is an eye witness has stated that the accused No.2 Kadir was holding a sword, accused No.3 Nabi was holding iron pipe and accused No.1 Mohammed was holding sword. They assaulted Tarique with iron pipe and sword. Thereafter applicant No.1 had fired a shot from gun on the chest of Tarique. The Postmortem notes show that Tarique has sustained fire arm injury in addition he has sustained nine other injuries which are consistent with assault by sword and iron rod.

4. Learned Counsel for the applicants submitted that the complainant who is P.W. No.1 has not stated about the presence of P.W. 5 Hasan at the spot. However, the evidence of the informant shows that he was not present at the time of the incident and he came later-on at the spot. In any event an FIR is not an encyclopedia and basic facts have to be stated therein as known to the complainant. It is not expected that each detail has to be given in th FIR, hence, we are not inclined to give much importance to this aspect. Thereafter the learned Counsel for the applicants

submitted that P.W. 4 Mustaq and P.W. 5 Hasan are interested witnesses hence, their testimony cannot be relied upon. He also submitted that there were inimical relations between the deceased and the applicants and on account of this the applicants have been falsely implicated. However, it is seen that both these witnesses have not been shaken in their cross examination. Prima facie we find their testimony reliable.

5. Thereafter it was submitted that some persons took the deceased to the hospital, however, their blood stained clothes were not seized by the Investigating Agency. It is submitted that there were other persons present at the spot but their statements were not recorded and only statements of interested witnesses were recorded. Both these cannot be the circumstances on which bail can be granted.

6. Looking to the evidence on record and the role played by the applicants we are not inclined to grant bail. Application for bail is rejected.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI, J.)