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

**CRIMINAL APPLICATION NO. 442 OF 2017
IN
CRIMINAL APPEAL NO. 256 OF 2017**

Rajesh Shamrao Vitkar

...Applicant
(Orig. Accused No.4)

Vs.

The State of Maharashtra
(Through P.S.O. Chaturshungi Police Station, Pune)

Mr. Bhalchandra S. Shinde i/b. Mr. Hussnain Kaazi Sayyed,
Advocate for the Applicant
Mr. H.J. Dedia, A.P.P. for the State

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.
DATED :30TH MARCH, 2017**

ORAL ORDER: (PER SMT. V.K. TAHILRAMANI, J.)

1. Heard both sides.
2. The Applicant–original accused No.4 has been convicted along with three other accused for committing the murder of Maruti @ Dorya on 21st March, 2014 at about 4 to 4.45 p.m. Learned Counsel for the

Applicant submitted that there are two eye witnesses i.e., P.W. 2 Sunil Shevre and P.W. 3 Raju Khandaskar. He has drawn our attention to the evidence of P.W. 3 Raju who is an eye witness to the incident. Raju has stated that Rakesh Jadhav original accused No.1 took out Koyta which was hidden at his waist and assaulted Maruti @ Dorya four to five times. At that time, P.W. 2 Sunil intervened. Rakesh then pushed Sunil away. Meanwhile, Polekar original accused No.2 assaulted Maruti @ Dorya on his head with Koyta. Meanwhile, Mangesh Gade—original accused No.3 took a big stone which was lying nearby and was about to hit Maruti @ Dorya on his head with the stone, however, P.W. 2 Sunil pushed him, hence, the stone instead of falling on the head, fell on the back of deceased Maruti. At that time, P.W. 2 Sunil got frightened, hence, he started running. While running P.W. 2 Sunil dashed Applicant who in turn slapped Sunil. This is the only role which has been attributed to the Applicant. No role has been attributed to the Applicant of assaulting deceased Maruti. Looking to the evidence on record, prima facie we are of the opinion that the applicant did not share the common intention to kill Maruti @ Dorya with the other accused.

3. Looking to all the facts, we are inclined to grant bail to the

Applicant. Hence following order:

O R D E R

1. The Applicant to be released on bail in the sum of Rs.30,000/- with one or two sureties to make up the said amount and PR. Bond of the same amount.
2. During the period the Applicant is on bail he shall report to Chaturshungi Police Station on first Monday of every month.
3. The Application is allowed in above terms.

(M.S. KARNIK, J.)

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