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

**CRIMINAL APPLICATION NO. 493 OF 2017
IN
CRIMINAL APPEAL NO. 290 OF 2017**

Anil Jagannath Yadav
Age 24 years,
R/o. Row House No.3,
Sai Row House,
Upendra Nagar, CIDCO
Nashik.

...Applicant

Vs.

The State of Maharashtra
(At the instance Ambad Police Station,
District: Nashik)

...Respondent

Mr. P.R. Arjunwadkar, Advocate for the Applicant
Mr. H.J. Dedia, A.P.P. for the State

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.
DATED : 21ST APRIL, 2017**

P.C. :

1. Heard both sides.
2. The applicant original accused No.2 has been convicted under Sections 302 and 307 r.w. Section 34 of the Indian Penal Code, the applicant is now seeking bail.

3. It is the prosecution case that on 3rd November, 2009 at about 9.45 p.m. the applicant along with accused No.1 Prabhat Adhav assaulted Yogesh Bhaulal Mahale with knife, which led to the death of Yogesh Mahale. In addition it is the prosecution case that the accused persons with common intention assaulted P.W. No.1 Dinesh Rajaram Patil who is an eye witness to the incident. P.W. 1 Dinesh who is an injured witness has sustained two injuries i.e. on the left lumbar region and left elbow. On account of these injuries Dinesh was admitted for many days in the hospital.

4. The learned Counsel for the applicant submitted that the evidence of the eye witness P.W. 1 Dinesh shows that there was darkness at the place where the incident took place. He pointed out that Dinesh has admitted that when they reached the ground it was dark. The incident has taken place on the open ground in Upendra Nagar, in the city of Nashik. It is an admitted fact that the applicant, witness and deceased were known to each other. It cannot be said that in a city like Nashik on the open ground at Upendra Nagar there would be pitch darkness. In any event there is bound to be moonlight and as the applicant was known to the witness it would be easily

possible to identify the applicant / accused even in moonlight. Thus we find no merit in the submission that as it was dark it was not possible to identify the accused persons.

5. Thereafter it was submitted that the witness has not stated on which particular part of the body each of the accused has assaulted. It is not necessary that a witness should state on which particular part of the body assault was made by which accused. Even if the witness states that the accused person has assaulted the deceased or the witness it would be sufficient.

6. Thereafter it was submitted that P.W. 1 Dinesh has stated that both the accused Nos. 1 and 2 assaulted Yogesh with knives. It is submitted that only one injury which is consistent with knife was found on the body of the deceased Yogesh which shows that the entire prosecution case is false. We have perused the evidence of P.W. 9 Dr. Arun Pawar who has conducted the postmortem on the dead body of Yogesh. He has stated that he found contused lacerated wound on left arm, three injuries on the back i.e. abrasions and one stab wound on the right side of the chest. Looking to the number and nature of

injuries it cannot be said that the evidence of the injured witness is not reliable.

7. Thereafter it was submitted that P.W. 1 Dinesh has stated that both accused Nos. 1 & 2 assaulted Yogesh with knives, however, the Doctor does not say that the injuries are possible by knife hence, the prosecution case is false. No doubt P.W. 9 Dr. Pawar who conducted the postmortem has not specifically stated so, however he has stated that the injuries are possible with sharp object with pointed edge. This shows that the medical evidence is consistent with the evidence of the eye witness.

8. Lastly it was submitted that there were three accused persons. The third accused Rahul Khairnar was juvenile accused and he had received injuries in the incident. On the basis of this it was submitted that the genesis of the incident was suppressed, therefore, the entire story of the prosecution is doubtful. Reliance was placed on the medical certificate of Rahul Khairnar. We have perused the said certificate. It shows that he had sustained three injuries. However the injuries were simple in nature. The medical certificate shows that the

injuries were superficial injuries. The main point as far as this submission is concerned is that it does not appear that the medical certificate has been exhibited. In such case reliance cannot be placed at this stage on the said certificate. Even assuming for the sake of argument that this medical certificate can be relied upon, this certificate shows that the injuries sustained by Rahul Khairnar were simple and superficial in nature. It is also the prosecution case that Rahul Khairnar had assaulted P.W. No.1 Dinesh with a knife on the waist and left hand. It appears that while assaulting Dinesh superficial injuries were caused to Rahul Khairnar, hence we are not inclined to give any importance to the same.

10. Lastly it is submitted that the applicant was on bail pending trial. The record shows that applicant has assaulted the deceased with common intention with deadly weapons and caused his death. In addition with common intention they have caused injuries to P.W. No.1 Dinesh. Looking to all these facts we are not inclined to allow the application. Hence, prayer for bail is rejected. However the hearing of the Appeal is expedited.