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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.618 OF 2017

IN

CRIMINAL APPEAL NO.508 OF 2017

Dinesh Sona Patel

..Applicant.

V/s.

The Union Territory of Dadra
& Nagar Haveli

..Respondent.

Mr.Manoj M.Badgujar for the applicant.

Ms.Purnima Kantharia, Special PP for respondent No.1.

Mr.M.G. Patil, APP for the respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : NOVEMBER 2, 2017

P.C.:-

The applicant herein, who stands convicted and sentenced for offence punishable under section 307 of the Indian Penal Code, has filed this application for suspension of his sentence and release on bail.

2. Heard Mr.Manoj Badgujar, learned counsel for the applicant, Ms.Purnima Kantharia, learned Special PP for respondent No.1 and

Mr.M.G. Patil, learned APP for the State. Perused the record and considered the submissions advanced by learned counsel for the respective parties.

3. The allegations against the applicant were that on March 6, 2013 at about 12.00 p.m., the applicant entered the premises of Sarla company situated at Pipria Udyog Nagar and stabbed Ramesh Bachilal Yagi and thereby attempted to commit his murder. Pursuant to the F.I.R. lodged by brother of the injured with the Silvassa police station, Crime No.48/2013 came to be registered against the applicant for offence punishable under section 307 of the Indian Penal Code. Upon completion of the investigation, charge-sheet was filed and the case being sessions triable, the same was committed to the Court of Sessions, Dadra and Nagar Haveli, Silvassa. Learned Sessions Judge, after considering the evidence on record has held the applicant guilty for the offence punishable under section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and to pay fine of Rs.1,000/- and in default to undergo rigorous imprisonment for three months.

4. Learned counsel for the applicant submits that the only

independent witness, who has been examined has not supported the prosecution. He submits that the prosecution has not examined the other independent witness who were allegedly present at the place of the incident. He submits that the witness to the seizure panchanama has not supported the case of prosecution. Furthermore, the testimony of PW2 that there were blood stains found on the clothes of the applicant is disbelieved by the trial Court. He contends that the evidence adduced by the prosecution does not establish the guilt of the accused.

5. It is pertinent to note that the evidence of the injured witness PW6 Ramesh Kumar Yagi, *prima facie*, reveals that on March 6, 2013 while he was at his work place, the applicant suddenly came from the stair case with a knife and stabbed on the left side of his stomach and on his right hand. He thereafter gave one more blow of knife on his cheek and on left side of his stomach. He has deposed that as a result of the said injury, his internal organs had come out and he was unconscious.

6. The evidence of PW5 Dr. Soeb Malek, *prima facie* reveals that PW6 Ramesh was brought to Vinoba Bhawe Civil Hospital, Silvassa on March 6, 2013 at about 12.20 p.m. He stated that PW6 was in critical condition and he had sustained following injuries:-

- “(i) CLW over left side of abdomen measuring 4 x 1 x 1 cm.
- (ii) CLW over left right forearm measuring 7 x 1 x 1 cm.
- (iii) CLW over left cheek with left parotid gland laceration measuring 14 x 2 x 2 cm.
- (iv) Stab wound of full thickness on left side of abdomen with intestine coming out from wound with multiple perforation of jejunum (small intestine). ”

7. The evidence of PW6, which is duly corroborated by the medical evidence, *prima facie* reveals that the applicant was involved in commission of offence punishable under section 307 of the Indian Penal Code.

8. The evidence of PW6 appears to be reliable and *prima facie* there is no reason to disbelieve or doubt the testimony of the injured witness for non-examination of other eye witness or because some of the witnesses have turned hostile.

9. Considering the nature of the offence as well as the evidence in support thereof, in my considered view, this is not a fit case for suspension of sentence and releasing the applicant on bail. Hence, the application is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)