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

CRIMINAL BAIL APPLICATION NO. 1256 OF 2016

Abdul Salim @ Chiya Abdul Ajij Idrisi @ Tailor
@ Anr.

...Applicants

vs

The State of Maharashtra & Ors.

...Respondents

.....

Mr Aniket Vagal for the Applicants
Mr Amin Solkar for the Intervener.
Mrs P.P.Shinde, APP for the Respondent

.....

**CORAM : SMT SADHANA S. JADHAV, J.
18 JANUARY, 2017**

P.C. :

Heard. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 15 April, 2014 in Crime No.209 of 2014 registered at Sakinaka Police Station. The investigation is completed and charge-sheet is filed against the applicant and others for the offences punishable under Sections 143, 144, 146, 147, 148, 149, 324, 307, 302 of Indian Penal Code.

2 It is the case of the prosecution that on 15 April, 2014 Rashid Manihar lodged a report at the police station alleging therein that on 14 April, 2014 at about 11.30 p.m. they heard hue and cry

outside their house. Somebody had knocked their door. His father opened the door and he along with his father ran towards their shop. There they saw his uncle Mohommad Hussen and his driver Mehmud in an injured condition. He has seen some of the accused persons standing on the spot armed with weapon. The first informant was assaulted by Akram. He tried to rescue himself. His father had followed him in order to rescue him. The accused persons had chased them and had thrown pieces of glass towards them. He had sustained injuries with the glass. His father had fallen on the ground and thereafter all the persons who were chasing them had assaulted his father with deadly weapons. His mother had rushed towards them. She saw bleeding injuries on the person of her husband. The injured was then taken to the hospital, where he was declared dead on admission.

3 Learned counsel for the applicant, at the outset, prays for enlargement on bail by virtue of doctrine of parity. The learned counsel submits that by an order dated 25 March, 2015 this Court (**Coram : Revati Mohite Dere, J.**) had enlarged Mohommad on bail. According to learned counsel, the role attributed to the present applicant is similar to that of Mohommad.

4 Learned counsel has drawn attention of this Court to paragraph 6 of the said order, wherein the Honourable Court has observed that the name of the applicant is not disclosed in the F.I.R. and that apparently all the statements of the eye witnesses and the Complainant would reveal that the applicant had not played any role

in the assault on the deceased or on the complainant. Learned counsel appearing as a Special Police Prosecutor has drawn attention of this Court to the statement of Reshmabi, who happens to be the wife of the deceased. Her statement was recorded on the very next day that is 15 April, 2015. She has stated that after her husband and son had left the house she was worried, and therefore, she also followed them. Her daughter Nikhtabi @ Rani had also followed them. She has seen her brother-in-law Mohommad and his driver in an injured condition. They were unconscious. She has further stated that she has seen all the accused persons. She has seen her husband and son attempting to rescue themselves. She has given names of eight persons who had followed her husband and son. The applicants are at serial numbers 3 and 6. She has specifically stated that the said persons were throwing broken pieces of glass towards her son. Only after her husband had fallen unconscious on the ground, main accused Shehanshah and Mohit have again assaulted her husband and has caused his death. It appears that the statement of Reshmabi was not pointed out to the Predecessor Bench when the co-accused were enlarged on bail.

5 Learned counsel for the applicant submits that in the F.I.R. the son of Reshmabi has not mentioned that Reshmabi was present on the scene of offence when her husband and son were trying to flee from the spot to rescue themselves, and therefore, she could not have seen the accused persons following the complainant and the deceased.

6 Taking into consideration the material in the charge-sheet,

the statemen of Reshamabi and submissions advanced, this Court is not inclined to grant bail. The application being devoid of merits stands rejected.

(SMT SADHANA S. JADHAV, J.)