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

CRIMINAL BAIL APPLICATION NO.1774 OF 2017

Shubam Sanjay Bhise

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Sudesh Pasbola a/w Mr.Bhavesh Thakur i/b Mr.Rahul Arote, for the Applicant.

Mr.M.G.Patil, A.P.P for the Respondent-State.

PSI – R.S.Dhaigude, Tulij Police Station.

CORAM : REVATI MOHITE DERE, J.

DATE : 23rd AUGUST, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-161 of 2017 registered with the Tulij Police Station, Palghar, for the alleged offences punishable under Section 302 r/w 34 of the Indian Penal Code.
3. Learned Counsel for the applicant submitted that the applicant

and the deceased were friends and as such there was no motive to kill the deceased. He submitted that the incident took place on 27th March, 2017 at about 5.30 a.m. and that the same was an outcome of a sudden quarrel which took place between the applicant and the deceased, as the deceased had used abusive language as against the applicant's wife. He submitted that the applicant admittedly had not carried any weapon and had picked up a paver cement block which was lying at the spot, and had assaulted the deceased with the same. He submitted that the offence would not be one under Section 302 but would constitute a lesser offence. He further submitted that the applicant has no antecedents.

4. Learned APP does not dispute the fact, that the applicant has no antecedents.

5. Perused the papers. There are two eye-witnesses to the incident dated 27th March, 2017. According to one of the eye-witness – Rajkumar Mishra, at about 5.30 a.m., the deceased, applicant and others had come to his paan shop and asked for a cigarette. He has stated that they went across the road and suddenly a quarrel ensued between them. He has

stated that one of them started abusing and assaulting the deceased with fist and kick blows. He has further alleged that when he tried to separate the fight, one of the boys pushed him, pursuant to which, he fell down. He has stated that suddenly one of the boys picked up a paver cement block lying at the spot, and assaulted the deceased with the same. The question whether the offence would be one under Section 302 of Indian Penal Code or a lesser offence, is a matter which will be decided by the trial Court. *Prima facie*, it appears that the incident took place at the spur of the moment, as the deceased used abusive language as against the applicant's wife, pursuant to which, the applicant picked up a paver cement block lying at the spot and assaulted the deceased. The applicant is in custody since March, 2017. Investigation is complete and charge-sheet is filed.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

ii) The Applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the framing of the charge;

iii) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;

iv) The Applicant shall co-operate in the conduct of the trial.

7. The Application is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

9. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)