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

CRIMINAL BAIL APPLICATION NO.1932 OF 2017

- | | | |
|----|--------------------------------|----------------|
| 1. | Sunil M. Raj | |
| 2. | Arjun M. Bhalerao | |
| 3. | Sameer Shashikant More | |
| 4. | Praful Raiba Utekar | |
| 5. | Pramod Bajarang Lawangare | ...Applicants |
| | Versus | |
| 1. | The Senior Inspector of Police | |
| 2. | The State of Maharashtra | ...Respondents |

Mr.Rizwan Merchant a/w Mr.Swapnil Wagh and Mr.Sandeep B., i/b
Rizwan Merchant and Associates, for the Applicants.

Mr.S.S.Pednekar, A.P.P for the Respondent-State.

Mr.A.R.Pitale, for the Original Complainant.

CORAM : REVATI MOHITE DERE, J.

DATE : 13th SEPTEMBER, 2017

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the Applicants have impugned the order dated 8th August, 2017, passed by the learned District Judge – 3 and

Additional Sessions Judge, Kalyan by which their application for bail was rejected.

3. Learned Counsel for the applicants submits that the incident is of the year 2006 and that after investigation, the police have filed a Report under Section 169 of Code of Criminal Procedure. He submitted that pursuant thereto, the complainant filed a Protest Petition before the learned Magistrate and the learned 5th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Ulhasnagar, vide order dated 19th July, 2010, was pleased to issue Process Warrants as against the applicants for facing trial for the offence under Section 320 r/w 34 of the Indian Penal Code, on payment of Process Fee. He submitted that against the said order dated 19th July, 2010, issuing process warrants, the applicants preferred an application being Criminal Application No.3523 of 2010 and that this Court (Coram:V.M.Kanade,J.) vide order dated 16th August, 2010, was pleased to direct that no coercive steps be taken as against the applicants. Subsequently, this Court (Coram:R.C.Chavan,J.) vide order dated 21st February, 2011, passed in Criminal Application Nos.3523 and 4032 of 2010, was pleased to permit the applicants to withdraw their applications

with liberty to approach the Court of Sessions. He submitted that pursuant to the order dated 21st February, 2011, passed by this Court, the applicants filed a Revision Application before the Sessions Judge, however, the same was dismissed by the learned District Judge-2 and Additional Sessions Judge, Kalyan, vide order dated 12th April, 2017 passed in Criminal Revision Application No.25 of 2011 (Exhibit-1). Learned Counsel for the applicants submitted that the applicants had preferred an application, being Criminal Application No.483 of 2017 in this Court seeking stay to the Non-Bailable-Warrants issued by the trial Court. He submitted that this Court stayed the execution of the Non-Bailable-Warrants till 2nd June, 2017 and directed the applicants to file an appropriate application before the trial Court seeking recall of the Non-Bailable-Warrants on 2nd June, 2017. He submitted that the said application which was preferred by the applicants was rejected by the learned Judicial Magistrate First Class, Court No.2, Ulhasnagar, vide order dated 1st July, 2017 and the applicants were taken into custody. He submitted that the applicants filed an application seeking their enlargement on bail, however, the said application was also rejected. Being aggrieved by the said order, the applicants preferred an application before the learned Sessions Court seeking their enlargement on bail,

however, the same was rejected by the Sessions Court vide order dated 8th August, 2017. Learned Counsel for the applicants submitted that in the interregnum on 1st July, 2017 itself the learned JMFC was pleased to commit the case to the Court of Sessions and the case was numbered as Sessions Case No.169 of 2017. Being aggrieved by the rejection of this application, the applicants have approached this Court and are seeking bail. Learned Counsel for the applicants submitted that the deceased died an accidental death, when he dashed into a full glass pane at his work place. He submitted that the deceased was immediately taken to the Ordinance Hospital within 10 minutes, however, he was declared dead at about 12.10 a.m, i.e. within a few minutes of being taken to the Hospital. He submitted that the postmortem report shows that his femoral vessel was cut. He submitted that after due and proper investigation, police had filed a 'C' Summary Report. He submitted that the applicants are in custody since 1st July, 2017.

4. Learned APP submitted that after investigation, the police had come to the conclusion, that it was a case of accidental death and hence had filed a 'C' Summary Report.'

5. Learned Counsel for the Original Complainant opposes the application. He submitted that it is a case of homicidal death, which is given a colour of accidental death. He submitted that the complainant is running pillar to post from 2006, to ensure that the applicants-accused are booked for an offence under Section 302 of the Indian Penal Code. He relied on the order dated 19th July, 2010, to show the material, qua the applicants. He submitted that although it is alleged that the deceased had dinner, the postmortem report shows that the stomach contents were empty. He further submitted that even the shattered glass pieces were lying inside the club house, instead of lying outside the door, assuming that the deceased had dashed against the glass door. He further submitted that if the deceased was on his way home, as alleged by the applicants, he would have changed his clothes and would not be in his uniform. He submitted that the application be rejected and that the trial be expedited.

6. Perused the papers. The incident took place on 27th October, 2016 at the Ordinance Club House Hall at Ambarnath. Deceased-Shivnath Yadav alongwith Applicant Nos.1 to 5 were employed with Talwar Caterers, Mulund and were assigned to cater for parties organized at the

Ordinance Club House Hall. According to the applicants, deceased while leaving the premises for the Ordinance Club House Hall, stumbled upon a big glass pane and sustained a fatal injury on his thigh (i.e. cut to the femoral vessel), resulting in a bleeding injury. It appears that the deceased was immediately rushed to the hospital where he was declared dead within a few minutes. The applicants informed the deceased's father, who immediately rushed to the hospital. Pursuant thereto, the police officers of the Ambarnath Police Station registered an ADR, being ADR No.90 of 2006. On 18th January, 2017, the deceased-Shivnath's father filed a private complaint, in the Court of the learned Magistrate, as against the applicants, alleging offences punishable under Sections 302 r/w 34 of the Indian Penal Code. The learned Magistrate on 19th January, 2007, passed an order under Section 156(3) of the Code of Criminal Procedure, pursuant to which, the Ambarnath Police registered C.R. being C.R.No.51 of 2007, as against the applicants for the alleged offences punishable under Section 302 r/w 34 of the Indian Penal Code. It appears that on 23rd March, 2007, the investigation was transferred from the Ambarnath Police to the Crime Branch, Thane. It also appears that later on 22nd November, 2007, the Director General of Police, through DIG (Law and Order) further

transferred the investigation to State-CID, Pune, however, the investigation was again reverted to the Crime Branch, Thane. After investigation, the Crime Branch, Thane concluded that deceased- Shivnath died an accidental death and accordingly filed a 'C' Summary Report in the Court of the learned Magistrate, at Ulhasnagar. It appears that in the interregnum, the deceased's father preferred a petition in this Court alleging that the aforesaid CR was not being properly investigated. It appears that during the pendency of that Writ Petition, Crime Branch, Thane, had filed the 169 report. Accordingly, this Court (Coram:Bilal Nazki and S.A.Bobde, JJ.) vide order dated 22nd February, 2008 observed as under in para 2:-

“2 According to the investigation, death of Shivnath Yadav was accidental and it was not homicidal. Counsel for the petitioner disputes it. Once the police files the reports with the Magistrate, the Investigating Agency is expected to inform the petitioner. Therefore, as and when the report is filed by the police, the petitioner may file his protest petition/objections before the concerned Magistrate. If such an application is filed, the Magistrate, shall consider the matter in detail and pass appropriate orders in accordance with the law. Petition disposed of

accordingly.”

7. Thereafter, a Protest Petition was filed by the deceased's father in the Court of the learned Magistrate. The complainant was examined under Section 202 of Code of Criminal Procedure. It is alleged by the complainant that his son – Shivnath Yadav was assaulted by the Applicant no.1 and others. Pursuant thereto, the learned Judicial Magistrate First Class, Ulhasnagar, vide order dated 19th July, 2010, issued process warrants as against the applicants under Section 204(1) (b) of Code of Criminal Procedure, for facing trial for the offence under Section 302 r/w 34 of the Indian Penal Code. The said order was challenged by the applicants in this Court by filing an application, being Criminal Application No.3523 of 2010 and this Court (Coram:V.M.Kanade,J.) vide order dated 16th August, 2010, was pleased to direct the applicants to attend the police station and also directed that no coercive steps be taken against the applicants. Subsequently this Court (Coram: R.C.Chavan,J.) vide order dated 21st February, 2011 permitted the applicants to withdraw the application, being Criminal Application Nos.3523 of 2010 and 4032 of 2010 and granted liberty to the applicants to approach the Sessions Court. Accordingly, the applications

were disposed of as withdrawn with liberty as prayed. The applicants thereafter filed a Revision Application before the Sessions Court, which was dismissed by the learned District Judge -2 and Additional Sessions Judge vide order dated 12th April, 2017. It appears that non-bailable-warrants were issued as against the applicants and that the same were challenged in this Court by the applicants, by filing Criminal Application No.483 of 2017. This Court (Coram : Smt.Sadhana S. Jadhav,J.), vide order dated 4th May, 2017, directed the applicants to file an application seeking recall of the non-bailable-warrants before the learned Magistrate, however, stayed the execution of the non-bailable-warrants, till 2nd June, 2017. Pursuant thereto, the applicants filed an application seeking recall of the order of process and also prayed for cancellation of the non-bailable-warrants against them. The said application was rejected by the learned Judicial Magistrate First Class, Court No.2, Ulhasnagar, vide order dated 1st July, 2017 and the applicants were taken into custody. The applicants thereafter preferred an application seeking their enlargement on bail, however, the said application was also rejected as the offence was under Section 302 and the learned Magistrate had no power to grant bail. The case was committed by the learned Magistrate on the very same day to the Court

of Session and the case was numbered as Sessions Case No.169 of 2017. The applicants preferred an application seeking their enlargement on bail, however, the learned Sessions Judge, was pleased to reject the same, vide order dated 8th August, 2017. The incident is of the year 2006. It appears that after investigation the Crime Branch, Thane, had filed a 'C' Summary Report in the Court of the learned Magistrate. It was stated that the death of the deceased was an accidental death. The postmortem report shows that the femoral vessel of the deceased was cut, as a result of which deceased bled to death. The deceased was immediately taken to the Ordinance Hospital, however, within 10 to 15 minutes, the deceased succumbed to his injury. The applicants have been in custody since 1st July, 2017.

8. Considering the aforesaid, the application is allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicants be released on provisional cash bail in the sum of Rs.25,000/- each, for a period of four weeks;

ii) The Applicants shall thereafter furnish P.R. Bond in the sum of 25,000/- each, with one or two sureties in the like amount, within a period of four weeks of their release on cash bail.

iii) The Applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the concerned Court as well as to the concerned Police Station, in writing;

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

v) The Applicants shall co-operate in the conduct of the trial;

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

10. 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.

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

(REVATI MOHITE DERE, J.)