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

CRIMINAL BAIL APPLICATION NO.1997 OF 2017

1.	Avinash Dilip Jaiswal	
2.	Suresh Pradeep Jaiswal	...Applicants
	Versus	
	The State of Maharashtra	...Respondent

Mr.Manoj Mohite a/w Mr.R.W.Correia i/b Mr.S.R.Phanse, for the Applicants.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 19th SEPTEMBER, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicants seek their enlargement on bail in connection with C.R.No.I-1 of 2017 registered with the Kapurbawadi Police Station, Thane for the alleged offences punishable under Sections 302 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicants states that the incident took place at the spur of the moment. He submitted that although there are eye-witnesses to the said incident dated 31st December, 2016, the only allegation, qua the applicant no.1-Avinash Dilip Jaiswal, is that he attempted to throttle the deceased and the applicant no.2-Suresh Pradeep Jaiswal, assaulted the deceased with fist and kick blows. He submitted that it is co-accused – Amit Gupta, who is alleged to have pulled out a weapon and stabbed Vikas (deceased) on his cheek and abdomen.

4. Learned APP opposed the application. He, however, does not dispute the fact that the applicants have no antecedents.

5. Perused the papers. The incident took place on 1st January, 2017 at about 1.30 a.m. According to the complainant – Sachin More, he and his friends i.e. Vikas Upadhyay (deceased) and Sunil Singh had gone out for dinner to celebrate New Year on 31st December, 2016 at around 10.30 p.m. He has stated that at around 1.00 a.m., when the three of them reached Majiwada Junction near the Mumbai-Nashik Highway, there were tourist cars as well as private cab drivers who were plying their vehicles

from the said spot to Kalyan and Mumbra. He has stated that Vikas (deceased) approached one White Wagon-R tourist car, which was parked at the said spot and that there was some quarrel between Vikas (deceased) and one passenger who was sitting inside the said car, as to whether the said car should go to Kalyan or Mumbra. He has stated that pursuant to the quarrel, the said passenger got down from the car and left the spot. He has further alleged that when he and the deceased were looking for an auto rickshaw, the said passenger came there with three more persons and started assaulting Vikas (deceased). He has stated that he tried to intervene, however, he was pushed aside and the passenger i.e. accused no.1 – Amit Gupta pointed out a weapon and stabbed the deceased on his cheek and abdomen. He has alleged that applicant no.1 tried to throttle Vikas (deceased) and applicant no.2 assaulted Vikas (deceased) with fist and kick blows. It also appears that one more accused was implicated, however, in the supplementary statement, the name of the said fourth accused was withdrawn. The postmortem report shows that the deceased had sustained 3 injuries, 2 incised and 1 stab injury over right side Hypo-gastric region below umbilic penetrating upto intestinal walls. The cause of death was stated to be 'Death due to Hemorrhagic Shock due to Mesentric Bleed c

Hemoperitone with intestinal perforation.” Investigation is complete and charge-sheet is filed. There are no antecedents, qua the applicants.

6. Considering the role of the applicants, the application is allowed and the applicants are enlarged on bail on the following terms and conditions:-

ORDER

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

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.)