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

CRIMINAL BAIL APPLICATION NO.166 OF 2019

Ganesh Ravji Palekar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.V.S.Kurle, for the Applicant.

Mr.A.A.Palkar, A.P.P for the Respondent - State.

P.I. - C.V.Tendulkar, Bhandup Police Station, Mumbai.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JUNE, 2019

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.161 of 2018 registered with the Bhandup Police Station, Mumbai, for the alleged offence punishable under Section 302 of the Indian Penal Code.

3. Perused the papers. The applicant is the real brother of the deceased – Sunil Palekar. According to the complainant – Vasanti Sunil Palekar, they were all living together and that there used to be some quarrel between the applicant and her husband – Sunil, on account of the room, in which they were staying for last 10 years. She has alleged that on 24th April, 2018, at about 5.00 p.m. she received a call from her mother-in-law – Sunanda, who asked her to come home immediately as the applicant had assaulted Sunil and he was unconscious. She has stated that when she reached home, she learned from her mother-in-law that there was some quarrel that took place between the applicant and her husband – Sunil, while cleaning the courtyard of the house and that the applicant assaulted Sunil with a PVC pipe, pursuant to which he became unconscious. Thereafter, the complainant took her husband – Sunil to the hospital, where he was declared dead on admission. A perusal of the postmortem report of the deceased shows that the deceased had sustained tram track contusion on his right shoulder lateral aspect and right shoulder medial aspect, tram track contusion on left arm, upper third part; linear abrasion on left shoulder and upper third part of back; tram track contusion on left arm, lower third part and left infra-scapular region. No fractures were found on the deceased.

The cause of death is reserved. Till date, the police have not obtained the cause of death.

4. Learned Counsel for the Applicant submitted that the offence if any, would be a lesser offence and not one under Section 302 of the Indian Penal Code. It appears that the dispute arose at the spur of the moment, pursuant to which, the applicant assaulted his brother – Sunil. 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. The applicant is in custody since April, 2018. Investigation is complete and charge-sheet is filed.

5. Learned Counsel for the applicant has filed an affidavit-cum-undertaking of the applicant, wherein the applicant has stated that he will not enter the residential premises where the eye-witnesses as well as the complainant are residing. He has also undertaken to stay away from the vicinity where the aforesaid witnesses are residing. The said affidavit-cum-undertaking is taken on record and marked 'X' for identification.

6. In the peculiar facts and circumstances of the case, 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.15,000/- with one or two sureties in the like amount;
- ii) The Applicant shall attend the concerned Police Station, on the first Monday of every month, between 10:00 a.m. to 11:00 a.m., for a period of 12 months from the date of his release;
- iii) The Applicant shall inform his 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 Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

v) The Applicant shall not enter the residential premises or the vicinity where the eye-witnesses as well as the complainant are residing, till the conclusion of the trial;

vi) The Applicant shall co-operate in the conduct of the trial;

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

viii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the conditions, the prosecution will be at liberty to apply for cancellation of Applicant's bail. It is also open to the learned Judge to sent a report of the same.

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.