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

CRIMINAL BAIL APPLICATION NO.386 OF 2019

1.	Rajesh Suresh Nishad	
2.	Harimohan Sundar Nishad	...Applicants
	Versus	
	The State of Maharashtra	...Respondent

Mr.S.R.Pathak i/b Mr.R.S.Jaiswar, for the Applicants.

Mr.V.V.Gangurde, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 12th JULY, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicants seeks their enlargement on bail in connection with C.R.No.I-343 of 2017 registered with the Navghar Police Station, Thane Rural, for the alleged offence punishable under Sections 302 r/w 34 of the Indian Penal Code.
3. Learned Counsel for the Applicants submitted that the offence would not be one under Sections 302 r/w 34 of the Indian Penal Code but

would be a lesser offence.

4. Perused the papers. According to the complainant – Kapoor Mahendra Gehlot, he had seen some persons chasing the deceased and assaulting him as the said person had committed theft of a mobile phone of one of the said person. The complainant has alleged that the deceased was tied to a pole and thereafter assaulted with a wooden plank, taken from a hand cart standing there. Accordingly, a complaint was lodged as against unknown persons. During the course of investigation, four persons were arrested. There are three eye-witnesses, who had seen the applicants assaulting the deceased. In the identification parade that was held, three witnesses identified the applicant No.1 - Rajesh Suresh Nishad and co-accused – Vishnu Yadav and Narsingh Yadav. Admittedly, applicant no.2 - Harimohan Sundar Nishad has not been identified by the eye-witnesses. A perusal of the statement shows that the incident took place on 11th September, 2017 at about 6.15 a.m. in the morning. According to the prosecution, the applicants along with the co-accused were chasing one person and were shouting 'chor chor'; that thereafter, the person who was running was apprehended by the applicants and other co-accused and tied

to a pole. It is the prosecution case, that applicant No.2 - Harimohan picked up a wooden plank, from the cart, which was lying on the spot and assaulted the deceased. A perusal of the postmortem report of the deceased shows that he had suffered several injuries and the said injuries are stated to be brainstem injuries. The probable cause of death is stated to be 'Respiratory arrest due to brainstem injury'. Whether or not 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 applicants are in custody since 2017 and have no antecedents.

5. Having regard to the peculiar facts and circumstances of this case, 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 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 tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

v) The Applicants shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

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

vii) 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 as stated above, the prosecution will be at liberty to apply for cancellation of Applicants bail.

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

7. 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.

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

REVATI MOHITE DERE, J.