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

CRIMINAL BAIL APPLICATION NO.2005 OF 2019

Hemant Shyam Sawant	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr.M.A.Choudhari, for the Applicant.

Mr.S.V.Gavand, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th SEPTEMBER, 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.I-249 of 2018 registered with the Wada Police Station, for the alleged offences punishable under Sections 302, 324, 325, 504 r/w 34 of the Indian Penal Code.
3. Learned Counsel for the applicant submits that taking the prosecution case as it stands, no offence under Section 302 of the Indian Penal Code is made out, qua the applicant. He submits that the applicant

had not assaulted the deceased nor is the applicant alleged to have pushed the deceased, pursuant to which, she fell down and succumbed to the injuries.

4. Perused the papers. According to the complainant – Chinmay Sawant, the applicant and his family members were residing in the house opposite to their house. The complainant's agriculture land is also stated to be adjacent to the land owned by the applicant's family. It appears that there was a dispute between both the families and on account of the dispute, there used to be quarrel and several complaints were filed against each other. According to the prosecution, the incident took place on 30th September, 2018, at about 9.15 a.m. when the complainant's father had gone out of station for his work and when the complainant along with his grandparents and mother was present at home. It is alleged that the accused including the applicant started abusing the complainant on account of previous quarrel. It is alleged that when the complainant questioned the accused, why they were abusing him, they started assaulting the complainant. It is alleged by the prosecution, that the applicant assaulted the complainant with a wooden stick and another co-accused – Chetan assaulted the complainant with an iron fighter on his ear. It is alleged that the complainant's grandparents and the complainant's mother intervened and tried to pacify the quarrel. It is

alleged that in the fight, co-accused – Vilas Sawant assaulted the complainant's grandmother, aged 75 years, by fist blows and Shyam Sawant is alleged to have pushed her, pursuant to which, the deceased fell down and sustained injuries. The applicant and Chetan are also alleged to have assaulted the complainant and his grandfather. The deceased was taken to the hospital, however, she was declared dead before admission. The postmortem report shows that the complainant's grandmother (deceased) had sustained 4 injuries i.e. abrasion over right wrist; abrasion over right leg anterior aspect; abrasion over left leg anterior aspect and contusion on frontal region 1 c.m X 1 c.m scalp. The cause of death is stated to be 'Death due to cerebral damage consequent upon blunt force impact to head'. 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 applicant is in custody since February, 2019. Investigation is complete and charge-sheet is filed.

5. Considering the role attributed to the applicant, the application is allowed 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 local 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., for a period of 24 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 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 Applicant, in the Registry of the trial Court, within two weeks of his 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 Applicant's 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 the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

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

REVATI MOHITE DERE, J.