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

CRIMINAL BAIL APPLICATION NO.2451 OF 2018

Nilesh Anil Singh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.K.H.Giri a/w Ms.Dhinika Shah, for the Applicant.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 25th JUNE, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant, aged 25 years, seeks his enlargement on bail in connection with C.R.No.44 of 2018 registered with the Kherwadi Police Station, Mumbai, for the alleged offence punishable under Section 302 of the Indian Penal Code.
3. Learned Counsel for the applicant submitted that taking the prosecution case as it stands, no offence as alleged under Section 302 of

the Indian Penal Code is disclosed, *qua* the applicant. He submits that the act is not a pre-meditated act. He submits that the applicant and the deceased were brothers and that it appears, that a quarrel ensued between the two, pursuant to which the alleged offence took place. He submits that the applicant is aged 25 years and is a student of Engineering and was studying in an Engineering College at the time of the alleged incident. He submitted that the applicant is in custody since February 2018 and as such the applicant be enlarged on bail.

4. Learned APP opposed the application.

5. Perused the papers. The incident took place on 7th February, 2018 at about 13.20 hours, in the applicant's house. Admittedly, the applicant and deceased – Abhishek Singh, were brothers. From a perusal of the statements of the witnesses, it appears that the two brothers i.e the applicant and deceased – Abhishek were quarreling in the house and that the door was locked from inside. It appears that one of the neighbour, who heard the quarrel informed the applicant's father who in-turn informed his brother, who arrived at the spot. Thereafter, in the presence of the police,

the door was broken open and the deceased – Abhishek was found lying in the pool of blood. The applicant was seen lying next to the deceased with his left hand in the right hand of his brother - Abhishek. Faces of both, the applicant and the deceased were covered with a single shawl. According to the prosecution, the applicant picked up a hammer which was lying at the spot and assaulted his brother on his head, as a result of which, the deceased sustained a grievous injury and died. *Prima facie*, it appears that the incident is a outcome of a sudden quarrel, that took place between two brothers in the house. The prosecution has not brought on record any motive for the applicant to cause the death of the deceased. The prosecution case rests on circumstantial evidence. 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 aged 25 years and is a student. He is in custody since February, 2018. Investigation is complete and charge-sheet is filed.

6. Having regard to the peculiar facts and circumstances of this 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.25,000/- 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., till the conclusion of the trial;
- 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;

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, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

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.

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

REVATI MOHITE DERE, J.