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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINALL APPELLATE JURISDICTION

Criminal Bail Application No. 308 OF 2020

Nilesh Ananda Athavale ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Paras D. Yadav, for the Applicant.

Ms. M. H. Mhatre, APP for the Respondent - State.

CORAM : C. V. BHADANG, J.

DATE : OCTOBER 19, 2020

PC :

1. The applicant (accused No. 1) alongwith co-accused is facing prosecution for the offences punishable under S. 302, 201 read with S. 34 of I.P.C for having intentionally caused death of one Kerba Dongre.

2. The prosecution case is that the deceased was working at Mahalaxmi Honda Showroom at Bagal Chowk, Kolhapur. On 5th April, 2019 the deceased was returning home. It is said that the applicant alongwith co-accused and a juvenile in conflict with law (for short "JCL") were proceeding on a motor-bike. It is said that the motor bike ran over the foot of the deceased, upon which there was a quarrel, out of which the applicant and the co-accused alongwith JCL are alleged to have assaulted the deceased. Insofar as present applicant

is concerned, he is alleged to have assaulted by means of knife, as a result of which the deceased sustained injuries to which he succumbed.

3. On hearing the learned counsel for the applicant and the learned APP, it appears that the investigation is complete and the charge-sheet is filed. The FIR is against unidentified persons. The prosecution case is based on circumstantial evidence, including a CCTV footage, showing the applicant's presence at or nearby the spot, where the deceased Kerba Dongre was found lying dead. There is also a recovery of knife made under S. 27 of the Evidence Act. These are the only two circumstances, pressed into service by the prosecution. Insofar as juvenile in conflict with law is concerned, he had allegedly made an extra judicial confession to Samarth Gaikwad and Aditya Patil.

4. The learned counsel for the applicant pointed out that the confession is exculpatory in nature. I find that in any case the confessional statement is allegedly made by the JCL. The co-accused Rohit Dawade (accused No. 2) has been released by this Court vide order dated 13th November, 2019 passed in Bail Application No. 2693 of 2019. Except the circumstance of alleged recovery of the knife, present accused would be similarly situated with Rohit Dawade. Prima-facie, it is pointed out that the knife did not have any blood

stains on it, to amount to any incriminating circumstance. In that view of the matter, I find that applicant can be released on bail. Hence, the following order.

ORDER

- (i) The criminal application is allowed.
- (ii) The applicant be released on bail in connection with C. R. No. 188 of 2019, registered with Karveer Police Station, Kolhapur, on his furnishing a PR bond in a sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall report to the concerned police station once in a month on first Saturday of the month between 10.00 a.m. to 12.00 noon.
- (iv) The applicant shall not tamper with the prosecution evidence / witnesses.
- (v) The criminal application is disposed of in the aforesaid terms.

Sd/-
C. V. BHADANG, J.