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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Cr. Bail Application No. 475 of 2020

Uttam Aappasaheb Kambale … Applicant
Vs.
State of Maharashtra … Respondent

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Mr. Paras D. Yadav, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent - State.

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CORAM : C. V. BHADANG, J.

DATE : SEPTEMBER 14, 2020
(Through video conferencing)

PC :

1. The applicant is facing prosecution for the offence punishable under S. 302, 201 of I.P.C. for having intentionally caused the death of his brother Gautam Kambale.

2. According to the prosecution, on 8th May 2019 at about 12.30 p.m., in front of the house, at Nimbalkar Mala, Sadar Bazar, Kolhapur, there was hot exchange of words and altercation between the applicant and the deceased, and both the applicant as well as the deceased were abusing each other. Further, according to the prosecution, in the hit of moment, the applicant picked up a brick and assaulted the deceased on his head on account of which the deceased sustained bleeding injury. Prima facie, it appears from the

statement of the witnesses and the prosecution case that even after the assault, the deceased continued to hurl abuses on the applicant for about 20 minutes. It further appears that wife of the applicant went at the spot when the deceased is alleged to have said to the wife of the applicant that her husband (i.e. applicant) has assaulted him with a brick, and saying so, he went away. Subsequently, Gautam Kambale succumbed to the head injury on account of hemorrhage. In this case, the investigation is complete and the chrge-sheet is filed.

3. I have heard the learned counsel for the applicant and the learned Additional Public Prosecutor for the respondent State.

4. The learned counsel for the applicant has strenuously urged that there was no intention, which can be gathered and which is attributable to the applicant, to cause death of his real brother Gautam Kamble. It is submitted that there was an altercation between the applicant and the deceased. At the spur of moment, without any premeditation, the applicant is alleged to have picked up a brick lying there and assaulted the deceased, in which there was a single blow. It is thus submitted that prima facie offence under S. 302 of I.P.C. is not made out. The learned counsel submitted that investigation is complete and the charge-sheet is filed and having regard to the present circumstances where the courts are not holding the physical hearings, there is no possibility that the trial could be expedited / concluded in

near future. The learned counsel submitted that even going by the prosecution case, the offence can at the highest be one under Section 326 or Section 304 (II) of I.P.C.

5. The learned APP has opposed the application. It is submitted that there are eye witnesses to the incident, available on record in the form of statement of Appasaheb, Kerabai Rokade and Vishal Kamble, and therefore, the applicant is not entitled for bail.

6. I have carefully considered the rival circumstances and the submissions made. It is neither necessary nor appropriate at this stage to appreciate the evidence and the material in depth or to express any final opinion, else otherwise it may prejudice the applicant or the prosecution at the trial. However, prima facie it indeed appears that there was hot exchange of words and altercation between the applicant and the deceased and both of them were exchanging abuses. Prima facie it appears that the applicant at the spur of the moment had picked up a brick and assaulted the deceased to which he subsequently succumbed. The investigation is complete and the charge-sheet is filed. Thus, having regard to the submissions made on behalf of the applicant, I find that the applicant can be released on bail, subject to the conditions.

7. It is made clear that the observations made herein are

essentially of a prima facie nature, for the limited purpose of deciding the plea for bail. The learned Sessions Judge shall not be influenced by the same at the trial.

8. Hence, the following order is passed.

ORDER

(i) The applicant be released on bail, on executing a PR bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount, before the learned Sessions Judge.

(ii) The applicant shall undertake to remain present before the learned Sessions Judge during the course of trial.

(iii) The applicant shall not directly or indirectly contact, influence or otherwise tamper with the prosecution evidence / witnesses.

(iv) In the event of breach of any of the conditions, the bail is liable to be cancelled.

(v) The criminal application is disposed of in the aforesaid terms.

Sd/-
C. V. BHADANG, J.

Vinayak P. Halemath

Digitally signed by Vinayak P. Halemath
Date: 2020.09.16 19:18:29 +0530