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

BAIL APPLICATION NO. 227 OF 2020

ANAS AFSAR SAYYAD

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Mangesh Arote i/b. Micheal Anthony Thilagaraj for the applicant.

Mr. N.B. Patil, APP for the State.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 4, 2021

P.C.

Heard learned counsel for the applicant.

2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.146 of 2018 registered with the Byculla Police Station, Mumbai, for the alleged offences punishable under Sections 302, 324, 323, 143, 144, 147, 148, 149, 504 and 506 of the Indian Penal Code and under Sections 37(1) (a) and 135 of Maharashtra Police Act.

3. Perused the papers. According to the complainant - Pratik Padwal, he alongwith Bhavesh Koli (deceased), Rajesh Jadhav, Sumeet Nagvekar and Bhavesh's uncle - Devji, were working for a

Municipal Contractor, who was allotted a parking spot, under the 'Pay and Park Scheme' of the Municipal Corporation of Greater Mumbai. The complainant has alleged that he and his associates were given the responsibility of helping in parking of the cars and issuance of parking receipts. He has alleged that four young boys from the vicinity used to drive two Yamaha RX 100 motorcycles in a rash and negligent manner, whilst passing from the parking area. According to the complainant, when he was on duty, he asked the said boys not to drive the motorcycles in a dangerous manner, however, the said boys would laugh and taunt him and his associates. The complainant has alleged that on 1 st July, 2018, when he was on duty along with his associates at about 1.30 p.m., four boys came there on motorcycles, cut across him and sped away after blurting something to him. The complainant has alleged that at 5.00 p.m. when the boys again returned on their motorcycle, he and his associates asked them to stop the motorcycles but they sped, took a 'U' turn and came towards the complainant and his associates in a high speed and threatened and abused them. Thereafter, within 5 to 10 minutes, the said boys are again stated to have come back with 3 of their associates. The complainant has alleged that the said persons assaulted him and his associates with a leather belt and fist and kick blows.

4. The main allegation against the applicant is that he gave blow of the knife on the chest of the deceased Bhavesh as a result of which Bhavesh collapsed. Bhavesh was taken to the hospital,

who expired during the course of the treatment.

5. Learned counsel for the applicant submitted that the applicant is the original accused and is in custody for the last more than three years. According to him, all other accused have been released on bail. According to him, there were as many as six to seven assailants who were assaulting the deceased Bhavesh with fist and kick blows. He further submitted that the complainant in his statement has said that the person who gave the blow was wearing a black shirt whereas the recovery is in respect of a black T-shirt. He, therefore, submits that possibility of wrong identification cannot be ruled out. He further submitted that there is delay in recovery of knife and clothes. The recovery was made on 8/7/2018 whereas the date of the incident is 1/7/2018. Learned counsel submitted that there is a delay in conducting test identification parade and same is conducted almost after one month. Learned counsel further submits that the applicant is a young boy of 23 years of age which aspect be considered sympathetically while granting bail. The applicant is not having any criminal antecedents. For all these reasons, learned counsel for the applicant submitted that the applicant be released on bail.

6. Learned APP opposed the application and submitted that the application should be rejected.

7. The post-mortem notes indicates the cause of death to be “Haemorrhage and shock due to stab injury (unnatural)”. As many as three witnesses Rajesh Jadhav, Sumeet Nagvekar and Devendra Vinjuda have attributed stab injury with the knife to the applicant. The blood stained T-shirt and knife have been recovered at the instance of the applicant. The applicant has been identified during the course of test identification parade by the witnesses. There are eye witnesses supporting the prosecution case.

8. In my opinion, considering the materials on record, this is not a fit case to grant bail. Hence the application is rejected.

(M.S.KARNIK, J.)

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