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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2127 OF 2022**

Saiyyad Abuzar Saiyyad Ishrail ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Subir Sarkar for the Applicant.
Mr. Amit Palkar, APP for the State.

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**CORAM : N.R. BORKAR, J.
DATED : 7 JANUARY 2023**

P.C. :-

This is an application under Section 439 of the Code of Criminal Procedure for bail.

2. The applicant came to be arrested in Crime No. 104 of 2021 registered at Pawar Wadi police station for the offences punishable under Sections 302, 397, 120B, 201, 109, 504, 506 read with 34 of the Indian Penal Code and 3/25 and 5/27 of the Arms Act.

3. The incident took place in the intervening night of 7 July 2021 and 8 July 2021. According to the prosecution, on 7 July 2021, at about 10:45 p.m., the complainant and his relatives including the deceased had purchased about 45 goats from goat market in Jalgaon. They loaded the said goats in pick-up jeep and started coming to Kalyan. According to the prosecution, at about 3:35 a.m. while they were near Chalisgaon on

Mumbai-Agra Highway, the present applicant and other co-accused with a view to rob them started chasing them on motorcycle and at that time, one of the co-accused was armed with pistol. It is alleged that the present applicant and other co-accused had asked them to stop their vehicle. However, as they did not stop the vehicle, one of the co-accused had fired at them. The bullet hit the deceased and he died due to bullet injury.

4. I have heard the learned counsel for the applicant and the learned APP for the respondent-State.

5. The report was lodged against the unknown persons. The present applicant was arrested on 12 July 2021. The test identification parade was however, conducted on 13 September 2021, i.e., after two months.

6. Apart from it, in the first round the complainant has not identified the present applicant and identified the other co-accused- Mohammad Sabir only. It however, appears that in a second round the complainant has identified the present applicant.

7. The learned APP submits that the Investigating Officer has submitted the proposal to the competent authority for grant of approval to invoke the offence punishable under MCOC Act. The learned APP has, however, submitted that the name of the present applicant is not there in the said proposal.

7. Considering the overall facts and circumstances of the case and as

there are no other criminal antecedents, I am inclined to release the applicant on bail. Hence, the following order is passed:

- (i) Application is allowed.
- (ii) The applicant be released on bail in Crime No. 104 of 2021 registered at Pawarwadi police station for the offences punishable under Sections 302, 397, 120B, 201, 109, 504, 506 read with 34 of the Indian Penal Code and 3/25 and 5/27 of the Arms Act on furnishing PR bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.

(N.R. BORKAR, J.)