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

BAIL APPLICATION NO.2328 OF 2023

NADEEM SALIM BEG

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Aniket Vagal a/w Adv. Kunal Pednekar a/w Adv. Divesh
Mehani a/w Adv. Savvy Kolhekar for the applicant.
Mr. P. H. Gaikwad, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 5, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under Sections 302, 397 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) and under Section 135 of the Maharashtra Police Act registered on 20.05.2022 vide C.R. No.129 of 2022 with Bhadrakali Police Station, Nashik.
- 3.** There are in all three accused. The applicant is the accused No.1. So far as the accused Nos.2 and 3 are concerned they have been enlarged on bail by this Court.

The prosecution case is set out in the order dated 27.06.2023 passed in Bail Application No.501 of 2023 in respect of accused No.3-Rohit Alias Dipak Ashosk Patade.

The relevant portion of the order reads thus :-

"2. According to the prosecution, on 20th May 2022 in the morning at 04:05 a.m. one Harish Bhaskar Patil (deceased) who was coming from Pune and walking towards his father's home situated near Fame Talkies, Nashik, the applicant along with other two co-accused were travelling by motorcycle. While deceased was crossing the road, the co accused dashed with the deceased resulting in altercation of words between the deceased and co-accused Nadeem. The co-accused stopped his motorcycle. Nadeem and applicant ran behind the deceased. Nadeem assaulted him by sharp edged knife on his chest and other parts of the body. Nadeem and applicant got mobile of the deceased. They returned at the place of motorcycle and fled on the motorcycles of the co accused. The investigating agency carried out investigation and filed charge sheet.

3. On perusal of the material on record, it appears that apart judicial confession, CCTV footage of the incident has been placed on record. The applicant and other accused have been identified by one Ashok Hinge. Prosecution claims extra judicial confession made Ashok Hinge. The material on record prima facie indicates that the applicant did not assault the deceased. The material on record prima facie indicates that after altercation with the deceased, Nadeem and applicant ran behind the deceased. Nadeem came back after assaulting the deceased. The extra judicial confession has been attributed to Nadeem.

5. The evidentiary value of extra judicial confession needs to be decided at the time of trial. However, on prima facie scrutiny of material on record, it appears that the applicant had not assaulted the deceased. The applicant has been arrested on 21st May 2022."

4. Learned counsel for the applicant submitted that though there is a CCTV footage on record, the identity of the applicant has not been established by the materials on record. It is further submitted that the prosecution is relying upon the extra judicial confession which is a weak piece of evidence. It is further submitted that only on the basis of CCTV footage which is produced after seven days, without any proof of identity of the applicant, the materials on record fall short in placing any reliance for the purpose of holding it against the applicant.

5. Learned APP opposed the application for bail.

6. Perusal of the order dated 27.06.2023 passed by this Court would reveal that this Court prima facie on the basis of the materials on record of the opinion that after altercation with the deceased, the present applicant and the accused No.3 ran behind the deceased. It is specifically mentioned that it is this applicant who has assaulted the deceased. The extra judicial confession has been attributed to the applicant. Though the knife has been recovered from the co-accused, the materials on record prima facie does

indicate that the assailant is the present applicant. The blood stained clothes were recovered at the instance of the applicant and chemical analysis report indicates the presence of blood stains of the deceased on the clothes of the applicant. One of the persons who is known to the accused but who is not named as an accused has identified the present applicant whose role is clearly seen in the CCTV footage as the one assaulting the deceased with a knife. There are as many as seven criminal antecedents reported against the applicant. In my opinion, this is not a fit case to enlarge the applicant on bail having regard to the materials on record.

7. The application is rejected.

(M. S. KARNIK, J.)