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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4724 OF 2015

Vikramsingh S/o. Dattusingh Chouhan,
Age: 60 years, Occu.: Business/Agriculturist,
Resident of : Vishal Nagar, Latur,
Tal. & Dist. Latur

....APPLICANT

VERSUS

The State of Maharashtra,
MIDC Police Station, Latur,
Dist. Latur

....RESPONDENT

Mr Shirish Gupte, Senior Advocate i/b Mr. A. D. Ostwal, Advocate for
applicant;
Mr S. R. Palnitkar, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 28th September, 2015

ORAL ORDER :

This is an application by accused Vikramsingh s/o Dattusingh Chouhan, seeking regular bail, in connection with C.R. No.80 of 2014, registered with M.I.D.C. Latur Police Station, Latur, on 27th March, 2014, for offences punishable under sections 302, 364, 354, 376 (2) (g), 201, 203, 120-B read with sec. 34 of the Indian Penal Code.

2. The applicant herein, claiming to be an innocent person, has sought bail, on amongst other various grounds, such as parity, seriousness of offence, nature of evidence against him, his age and health condition and completion of investigation.

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3. The facts, as are necessary for decision of the present application, are as under :-

4. Deceased Kalpana Mangal Giri, an Advocate by profession, daughter of an ex-serviceman Mangal Giri Narayan Giri and at the time of her death was Secretary of Youth Wing of a National political party for Latur District. On 21st March, 2014, upon intimating her father and other family members, she left her house for the party function and since then she was not traceable. On the same day her brother lodged a missing report with the police station.

5. On 23rd March, 2014, dead body of Kalpana was noticed and on 27th March, 2014, after identifying the body and completing the last rituals, complainant Mangal Giri lodged a report to the police station alleging the offence in question.

6. During investigation, it was noticed that one Vivekanand @ Viky, ex-employee of accused, was sought to be presented to investigating agency as an accused, claiming to be responsible for the death of Kalpana by the accused persons.

7. After completing the investigation, the charge-sheet was filed and the present applicant is named as one of the accused.

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8. Mr Gupte, learned Senior Counsel appearing on behalf of the applicant, while making out a case for grant of regular bail in favour of the present applicant, has taken me through the statements of the witnesses Viky Sarkale, Ramchandra Gojewad and Khandu Magar, so as to canvass that the applicant herein could be charged only for an offences punishable under section 201 read with section 214 of the Indian Penal Code, which offences according to him, are bailable. Learned Senior Counsel would urge that the other accused, namely, Prabhakar Shetty, was already released on bail by this Court, by an order dated 29th September, 2014, which was affirmed by the Apex Court. He would further add that accused Kuldipsingh and Suvarnasingh @ Shrirang are also released on bail by this Court on the ground of parity, by orders dated 10th August, 2015 and 10th November, 2014, respectively. According to him, the applicant being 60 years old and suffering from various ailments, including that of heart problem, is entitled to be released on bail. Apart therefrom, he would urge that the nature of accusations against the applicant are not serious and at the most are punishable with imprisonment for three years and as the investigation is complete, the applicant be ordered to be released on bail. He would further urge that even if the allegation of conspiracy is taken to be true, involvement of the applicant cannot be inferred in the offence punishable under section 302 of the Indian Penal Code, as admittedly from the record he is not involved in the commission of crime of murder, but is only responsible for the offence punishable under section 201 of the Indian Penal Code.

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9. Mr Palnitkar, learned Addl. Public Prosecutor appearing on behalf of the respondent, while opposing the application, has urged that the case of the applicant is not at par with that of the other accused persons. In support of his contention, he has relied upon the statement of Viky Sarkale, an ex driver of accused Shrirang and would urge that the applicant being a Corporator holds very influential position in the city of Latur. He would urge that no individual witnesses or members from public are coming forward to depose in support of the case in question. In order to buttress his submissions, learned Addl. Public Prosecutor has invited my attention to a very exhaustive order passed by the learned Sessions Court while rejecting the bail application of the applicant. According to him, witness Khandu Magar has initiated proceedings against the Investigating Officer and has also filed a writ petition, which shows the influence of the applicant-accused. He would further submit that the applicant has no respect for law and has absconded throughout from the date of registration of the offence i.e. for more than one and half year. He has invited my attention to the proceedings initiated under section 82 of the Code of Criminal Procedure against the applicant. In addition, he would urge that the applicant was instrumental in giving threats to the complainant and his family members and has invited my attention to the various complaints to that effect, lodged with the investigating agency. According to him, in view of above, the investigating agency was required to provide protection to complainant and his family members.

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10. In short, the submission of learned Addl. Public Prosecutor is that the case of the applicant cannot be treated at par with the other accused persons and consequently, sought rejection of the application.

11. After dwelling upon the rival submissions, this Court has perused the charge-sheet in the matter. Perusal of the charge-sheet reflects that witness Viky, in clear terms, has stated in his statement, that the present applicant was having complete knowledge of the alleged offence of murder and has forced him to accept the guilt of his son Mahendrasingh on himself though Viky was not involved in the crime. The said statement further speaks of the relations of Mahendrasingh with deceased Kalpana and deceased Kalpana requesting him to marry with her. It is required to be noted that the applicant herein is claiming innocence. The statement herein above, in clear terms, speaks of the conduct of the present applicant in the background of knowledge about the death of Kalpana because of the act of Mahendrasingh. Instead of taking any steps against the accused persons, *prima facie*, it appears that he has hatched a conspiracy to destroy the evidence, though was in complete know how of the offence in question.

12. It is also required to be noted here that the applicant herein, from the statement of Viky Sarkale, appears to have been directly involved in hatching conspiracy and said statement speaks voluminous about the conduct of the present applicant. The statements of the other witnesses, namely, Ramchandra Gojewad and Khandu Magar also corroborate about

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the incident in question and involvement of the applicant. The said statements are required to be considered at its face value for the purpose of deciding the application.

13. Apart from above, it is required to be noted that the applicant is a Corporator in the Municipal Corporation of Latur, so also his son and from the date of registration of offence, i.e. on or about 27th March, 2014, he has avoided the arrest. Of course, he has every right to exhaust legal remedy of seeking bail from the Court, however, the fact remains that the repeated attempts on his part to secure bail from the Court though were unfruitful, yet the applicant was running away from the law and has responded to, by surrendering only after the Court has initiated proceedings against him under section 82 of the Code of Criminal Procedure, so as to declare him as an absconder. The fact remains that the learned Sessions Court appears to have issued a proclamation against the present applicant calling upon him to appear before the Sessions Court on 8th April, 2015. The moment the said proclamation was issued against the applicant, he surrendered in the Court of Judicial Magistrate First Class on 23rd March, 2015, which shows the conduct of the applicant *qua* the respect for law. It is also required to be noted that the applicant, a Corporator, has also not attended the proceedings of the Municipal Corporation, Latur, which prompts this Court to form an opinion that the applicant was avoiding the process of law and its consequences and hardly any respect for the same.

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14. So far as the last submission of the learned Senior Counsel as regards parity is concerned, in my opinion, the case of the applicant cannot be treated at par with that of other accused, namely, Prabhakar Shetty, Kuldipsingh Thakur and Mahendra Chauhan, as the nature and gravity of the circumstances in which the applicant has committed the offence, his position and status, so also that of the victim and the conduct of the present applicant of fleeing away from the justice and the grim prospect of possible conviction of the applicant in the case in question, prompts this Court to take a view that his case cannot be treated at par with the other accused. The other accused have not faced proceedings under section 82 of the Code of Criminal Procedure as an absconding accused. It is also required to be noted that upon perusal of the charge-sheet, there is enough iota of evidence available against the applicant and his influential personality cannot be ignored, particularly when his Driver, namely, Khandu Magar has backed out from his statement even before commencement of the trial, by initiating criminal proceedings against the Investigating Officer.

15. Though the applicant has sought to rely upon the judgment of the Apex Court, in the matter of **Sanjay Chandra vs. Central Bureau of Investigation**, reported in **(2012) 1 SCC 40**, so as to canvass that the object of bail is neither punitive nor preventive and his punishment will always begin from the date of conviction, yet this Court cannot be ignorant of the very conduct of the applicant of (a) initiation of proceedings as an absconder against him, (b) initiation of prosecution against the

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Investigating Officer by one of the witnesses, namely, Khandu Magar, who was Driver of the applicant and (c) the threats to complainant and his family members and requirement of providing protection to complainant and his family members.

16. In view thereof, in my opinion, no case for grant of bail is made out. Criminal Application, therefore, stands rejected.

(N.W. SAMBRE, J.)

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