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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 392 OF 2015
IN
CRIMINAL APPEAL NO. 654 OF 2015

Parshuram Babu Balwad

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. Kuldeep U. Nikam for applicant.
Smt. V. R. Bhonsale, APP for State.

CORAM: B. P. DHARMADHIKARI &
A. S. GADKARI, JJ.

AUGUST 05, 2015.

P.C.

1. Heard. Applicant/Original Accused No.3, who is behind bars since 2009 is before this court seeking suspension of sentence and release on bail. Learned counsel states that accused no.1 – Sanjay, who is supposed to have contracted with accused nos.2 and 3 in the matter has been acquitted by trial court. Recovery of amount of Rs.10,000/- out of total contract consideration of Rs.12,000/- allegedly paid by said Sanjay to accused nos.2 and 3, therefore, cannot be an incriminating circumstance. It is further pointed out that it is alleged that a cell phone of Motorola Company has been recovered at the instance of accused no.3 on 31/3/2009,

however, that cell phone and cash amount has already appeared in remand application filed by the police before trial court on 26/3/2009. Learned counsel submits that in all probability, cash and that cell phone which was already recovered at the instance of accused no.2 when nobody has expressly named accused no.3, has been used as a circumstance by fastening alleged recovery on him. It is pointed out that one Vishwajit Pawar, who is witness to memorandum of admission has not been examined. Witness, who entered witness box, has not supported that memorandum as memorandum has been recorded by translating whatever accused no.3 allegedly narrated in Kannad into Marathi and this translation was done jointly by Head Constable Poojari and that witness. Learned counsel clarifies that this position is recorded in panchanama. He submits that said witness has pointed out in his deposition before trial court that all his education was in Marathi medium and, therefore, he has no knowledge of Kannad language. Head Constable Poojari has not been examined. Therefore the memorandum has to be disbelieved and as such recovery cannot survive as a circumstance against accused no.3.

2. It is further pointed out that in so far as last seen theory is concerned, informant PW 16 (brother of deceased) in all probability got knowledge of death of Uday after 3.30 p.m. As such the period from 7.30 a.m. to 3.30 p.m. has been narrated by him as probable period during which the offence might have been committed. Witnesses on last seen, namely, Pws 8, 9, 10, 11 and 12, even if presumed to be true, at the most state that the accused persons were seen with deceased before 11 a.m. in the morning and thus these persons were not with him after 11 a.m. till 3.30

p.m. Hence, the last seen theory also cannot be applied in the present facts.

3. Learned APP has opposed the bail application. According to her appeal is already admitted for final hearing and evidence cannot be gone into threadbare at this stage. The cell phone of deceased is recovered at the instance of accused no.3 and on 26/3/2009 when remand was sought, police had pointed out to the learned court of JMFC that cash amount and cell phone was to be recovered. It is further stated that deceased was last seen alive in the company of accused persons.

4. Having heard respective counsel, we find that the prosecution has pointed out to trial court memorandum of admission and also recovery panchanama. Witness who has deposed about memorandum is also witness of recovery. At this stage, the recovery of a Motorola mobile belonging to deceased at the instance of accused no.3, therefore, cannot be ignored. Facts also show that witnesses had seen accused persons with deceased lastly. Thereafter the whereabouts or movements are not on record. In this situation it is not possible for this court to delve more into the evidence at this stage.

5. No case for bail is made out. Application is rejected. However, hearing of Criminal Appeal No. 654 of 2015 is expedited. Criminal Appeal No. 654 of 2015 be put up with Criminal Appeal Stamp No. 703 of 2015.

(A. S. GADKARI,J.)

(B. P. DHARMADHIKARI,J.)