

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2665 OF 2014

Sandeep Mahadeo Dalvi

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr. Prakash Naik a/w Mr. Pawan Mali for the Applicant.

Mr. D.P. Adsule, A.P.P. for the State/Respondent.

CORAM :- SMT. SADHANA S. JADHAV, J.

DATED :- 3rd MARCH 2015.

P.C. :-

This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 27th June 2014 in Crime No.200 of 2014 registered at Shahupuri Police Station, Kolhapur, for the offences punishable under Sections 302, 201 r/w. 34 of I.P.C.

2) The investigation is completed and charge sheet is filed on 23 September 2014. It is the case of the prosecution that on 28th May 2014, Swati Magdum informed the Police that she resides with her husband and that her husband was working as a Porter. They were residing as tenants in the house of Ganesh Shankar Nigavekar. Her husband was an alcoholic. On 27th May 2014, her husband had returned under the influence of alcohol at about 3.00 p.m. At 11.00 p.m., he had left the house. He did not return home. In the morning

at 6.00 a.m., she saw her husband lying in front of house. She tried to wake him up, however, he was motionless and that he was found dead. She had specifically stated that she does not suspect anybody.

3) Postmortem was conducted on the dead body of Santosh Magdum. The cause of death was due to compression of neck. There was ligature mark present on Hyoid bone, Thyroid cartilages, and the cervical vertebrae.

4) In the course of investigation it was revealed that wife of the deceased, that is Swati, having illicit relations with present applicant. The call details record indicated that the wife of the deceased and the present applicant were in contact with each other frequently. That on the day of the incident also, there were calls between the applicant and Swati. On 27th June 2014 Arun Kulkarni, P.S.I. of Shahupuri Police Station, lodged report at the Police Station. In the said report he has stated about stages of investigation in the A.D. enquiry. The applicant was arrested on that date. The applicant had disclosed to the police in the enquiry that he was having illicit intimacy with Swati Magdum. He had admitted his guilt before the police. Learned counsel for the applicant submits that the said disclosure would be inadmissible in evidence and it was hit by Section 25 of the Indian Evidence Act. Besides the statement of the accused was recorded in Police custody, prima facie there is no material to show the involvement of the applicant in the homicidal death of Santosh Magdum. On the day of incident, it can be presumed that

Santosh Magdum was in the custody of his wife Swati and the dead body was found in front of his own residential house. Applicant has made out a case for grant of bail. The co-accused Swati Magdum shall not claim parity with the present applicant.

5) The observations are prima facie in nature and shall not be considered for the purpose of quashing of F.I.R. discharge application or at the time of trial.

Order

- (i) The application is allowed.
- (ii) Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- and one or more sureties in the like amount.
- (iii) The application is allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)