

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAILAPPLICATION NO. 52 OF 2015

Yadav Shivram Patil	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Kedar J. Patil, Advocate, for the applicant
Mr.Arfan Sait, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 23rd February, 2015.

P.C.

This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 11.8.2014 in Crime No.143 of 2014 registered at Chirnare Police Station for the offences punishable under Sections 302, 201 of Indian Penal Code.

2. It is the case of the prosecution that on 12.7.2014, one Shashikant Mhatre had lodged a report at the police station stating therein that he was married to Sujata in the year 1999. He was staying with her at Koproli, Taluka Uran. The couple was blessed with two sons. The marriage was smooth sailing

till 2010. in 2010, his wife had developed intimacy with one Vijay Namdeo Thakur. He was residing with him at Village Chirner. In May, 2013, he had seen Vijay Thakur in the company of his wife. Thereafter, he had not seen her and, therefore, he had lodged a missing report, which was registered as 28 of 2014. On 10.7.2014, he had lodged first information report stating therein that she was residing with Vijay Thakur. She had also lodged a report at Chirner Police Station against Vijay Thakur alleging that she apprehends danger. He had brought it to the notice of the police that the room in which she was staying with Vijay Thakur was locked for the past six months. He was accordingly informed by the owner of the said room i.e. Arun Thakur. He had ignored the said information as he was not concerned with his wife. He had categorically stated that he suspects Vijay Thakur. He had set the law into motion. In the said enquiry, on 13.8.2014, the I.O. recorded the statement of the owner of the said room i.e. Arun Thakur who had disclosed to the police that he had given his room on rent to Vijay Thakur and Sujata Mhatre, who had posed before him as husband and wife. He had learnt that the room was locked for the past six months. He had called Vijay Thakur and asked him to vacate the room. However, he had not responded to the said request. Arun Thakur had called upon some people from the village and had opened the room in their presence. They found Rs.4,50,000/- in cash and some golden ornaments. There was a Bank slip on the said bundle of notes which was of

Karnala Bank. Arun Thakur has further disclosed that when they entered into the kitchen room, they saw that there were two vessels on the Gas stove. The landlord therefore, suspected that she must have left the room suddenly while she was cooking. There was a golden Mangalsutra hanging on the wall in the kitchen room. The owner had presumed that they belonged to Sujata Mhatre. He kept the said amount in his Bank account and thereafter had given the said room on rent to one Jivan Mhatre. According to him, after some days, Vijay Thakur and Sujata Mhatre had come to him and informed him that said articles belonged to them and had therefore demanded the cash and the golden articles. The owner had told them to get Sujata and then he would return the said amount on 15.11.2013. He met Asha Mhatre on the occasion of the 10th day after his father's death and therefore, Asha Mhatre had told him that on 16.11.2013 in the morning she had seen Sujata Mhatre in the company of the present applicant and thereafter the whereabouts of Sujata were not known. In the course of investigation, the I.O. had again recorded the statement of Shashikant Mhatre. He had disclosed that 4 – 5 days prior to 10.7.2014, Arun Thakur had called upon him and informed him that Sujata is missing since the past six months. According to him, since she had withdrawn herself from the society of her husband, he had not paid attention to the same. Thereafter he had learnt that Sujata has died homicidal death at the hands of the present applicant.

3. It is pertinent to note that the I.O had recorded the statement of Vijay Thakur on 17.8.2014. He has specifically stated that he was residing with Sujata Mhatre. He used to visit her house intermittently. He had suspected her intimacy with the present applicant, but had no cogent evidence to that effect. He has further disclosed that since July 2012, Sujata was residing with the present applicant in Khanda Colony. According to him there was a quarrel between them. She had lodged a report at Uran Police Station. She had threat perception from Vijay Thakur. In July, 2013, he had seen the present applicant in the company of Sujata in the room at Chirner. He had learnt that they quarrelled among themselves. On 6.8.2013, Sujata had severed her relations with Vijay Thakur and hence he had never visited her. On 12.1.2014, Arun Thakur had met Vijay Thakur. He had taken his cellphone number and had told Vijay Thakur that since he was not residing with him in room since December, he should vacate the room. He had also asked Vijay Thakur to take away his belonging and pay the rest of the rent. Vijay Thakur presumed that Sujata must have gone somewhere without informing the landlord and therefore, he did not bother about the same. He had also learnt from the investigating agency that the applicant had caused her homicidal death.

The I.O. had recorded the statement of one Chanrakant Chormale on 14.8.2014. He is the landlord of a room in Khanda Colony Taluka Panvel.

According to him, he had given the room on rent to the present applicant. He has further deposed that the owner along with one lady who posed to be his wife had resided there for some days. Thereafter, Vijay Thakur and his wife had come to the said house and locked the room. He had contacted the applicant who had informed him that at the request of his wife, they had left the said room. The photographs of the applicant was shown to Chandrakant Chormale and he had identified the present applicant.

On 19.9.2014, the I.O. had recorded the statement of Ramnath Gavand who was an estate agent. According to him, on 16.11.2013, Sujata had called upon him on her cellphone at about 8 p.m. and had refused to take the room offered by him.

The I.O. has then recorded the statement of one Krishna Hasuram Patil on 12.8.2014. He happens to be the maternal cousin of the present applicant. According to him, he was aware of the relationship between the present applicant and Sujata Mhatre. It is alleged that the applicant had informed him that she was insisting upon the applicant to reside with her permanently and divorce his wife. That Sujata had also quarreled with his wife and had assaulted his sister, wife and daughter. That Sujata was blackmailing him. That the applicant had given her Rs. 4 to 5 lakhs. Sujata had forced the applicant to sell her agricultural land. He has further disclosed that on 16.11.2013, in the midnight, the applicant had

allegedly informed Krishna on his cellphone that he had strangled her with her dupatta. Thereafter, he had put her into a cloth bag which he had brought from a temple. That he had put 3 – 4 stones in the said bag and thrown the said bag from Vasheni Bridge. The alleged extra-judicial confession was made to Krishna on 17.11.2013 and Krishna had maintained silence till his statement was recorded. The statement of Krishna is also recorded under Section 164 of Cr.P.C.

4. The learned APP submits that the prosecution rests upon the extra-judicial confession made before Krishna Patil which stands corroborated by the call details record. It is also submitted on behalf of the prosecution that a memorandum statement of the applicant was recorded under Section 27 of the Indian Evidence Act. The compilation of charge sheet shows the photographs of Vasheni Bridge. The dead body of Sujata is not traced till today. The learned APP supports the allegation under Section 302 of IPC only on the basis of the extra-judicial confession which, but for the CDR details, stands uncorroborated.

5. The learned Senior Counsel submits that Krishna happens to be the maternal cousin of the present applicant and merely by saying that the applicant had called upon him on 16.11.2013, is not sufficient to rest upon the same at this stage.

6. The learned APP submits that the statement of Asha Mhatre would show that the applicant had met Sujata on 16.11.2013 in the morning and that is the best evidence of last seen together. As against this, the learned Senior Counsel submits that this cannot be treated as a 'last seen' evidence since Asha Mhatre does not show that Sujata had left the house/room in the company of the present applicant. It is true that Sujata had a talk with Ramnath Gavand on 16.11.2013. According to Ramnath, Sujata had informed him telephonically that there was a quarrel between her and the present applicant.

7. The learned Senior Counsel submits that prima facie, after registration of the missing complaint, there was evidence against Vijay Thakur. However, Vijay Thakur was never suspected by the I.O. His statement was recorded under Section 161 of Cr.P.C. Since Arun Thakur has specifically stated that the room was in the custody of Vijay Thakur and Sujata Mhatre, he had also requested him to vacate the room. There was no response by Vijay Thakur. The evidence on record clearly shows that Vijay Thakur was residing with Sujata Mhatre. The case rests upon the statement of the accused in the nature of extra-judicial confession made to his maternal cousin. Prima facie, in the facts and circumstances mentioned above, the applicant herein has made out a case for grant of bail.

ORDER

(i) The application is allowed. The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

(ii) The applicant shall report to the Uran Police Station on every Sunday between 10 a.m. to 12 noon till the conclusion of the trial.

The application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)