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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 316 OF 2015
IN
CRIMINAL APPEAL NO. 938 OF 2014

Fakira Ramdatta Sharma

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. Satyavrat Joshi for applicant.
Mr. H. J. Dedhia, APP for State.

CORAM: P. V. HARDAS &
DR. SHALINI PHANSALKAR-JOSHI, JJ.

APRIL 29, 2015.

P.C.

1. By this application, the applicant/appellant seeks suspension of the substantive sentence of imprisonment and his enlargement on bail, pending the decision of the appeal. The applicant stands convicted for an offence punishable under Section 302 of the Indian Penal Code on the basis of the evidence that the applicant had committed murder of deceased Ajay on 7/6/2012.

2. The circumstances on which the conviction of the applicant is

based are, (i) a mobile hand-set allegedly belonging to the deceased, was recovered at the behest of the accused. The brother of the deceased Ajay, however, did not identify the said mobile hand-set as the one belonging to the deceased. (ii) A discovery memorandum under Section 27 of the Indian Evidence Act was recorded, by which the applicant had pointed out various places where the offence is alleged to have been committed and this has been held by the learned trial court to be admissible under Section 8 of the Indian Evidence Act, though it was found to be inadmissible under Section 27 of the Indian Evidence Act. (iii) Clothes were recovered at the behest of the accused which were found to be blood stained. The blood group on the said clothes could not be determined, but the blood stains were determined as human blood and (iv) a CCTV footage was obtained from the petrol pump which was downloaded by PW 14 - Gorakh and which was proved by PW 15 - Santosh. PW 15 - Santosh was the attendant on the petrol pump who on the basis of the CCTV footage had identified the applicant who had come to the petrol pump for filling the petrol at about 10 p.m. Accompanied by the deceased and another person. The mandatory requirements of obtaining a certification to the production of the CCTV footage was not followed. Thus, no certificate had been produced while producing the CCTV footage. Moreover, during the recording of the evidence of PW 14 - Gorakh, the trial Judge has observed that the memory card could not be opened and the trial court, therefore, not viewed the CCTV footage. The trial court further held that the circumstance that the deceased was last seen in the company of the accused had been established. Along with above circumstances, the prosecution has also relied upon the circumstance of motive.

3. We have heard Mr. Satyavrat Joshi, learned counsel for the applicant and the learned APP. Prima facie we find that the only circumstance of some consequence is the circumstance of CCTV footage i.e. the deceased being last seen alive in the company of the accused. Prima facie, we find that in the absence of the said certificate, the aforesaid circumstance could not have been relied upon by the trial court. Without re-appreciating the evidence, in our opinion, prima facie it appears to us that the said CCTV footage cannot form the basis of the conviction of the accused. The other circumstances have not been established by the prosecution and though the applicant was not on bail during trial, in our opinion, this is a fit case for suspending the substantive sentence of imprisonment and releasing the applicant on bail.

4. Consequently, this application is allowed and the substantive sentence of imprisonment of the applicant is suspended, pending the decision of the appeal and the applicant is released on bail on his executing a PR bond in the sum of Rs.50,000/- with one or two sureties in the like amount to the satisfaction of the trial court on further condition that the applicant shall attend the Wanawadi Police Station once in three months i.e. on first Saturday of the quarter between 8.00 a.m. to 9.00 a.m.

5. Application is allowed as indicated above.

(DR. SHALINI PHANSALKAR-JOSHI,J.)

(P. V. HARDAS,J.)