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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 398 OF 2015
IN
CRIMINAL APPEAL NO. 167 OF 2015

Ibarat Hussain Kitabullah

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. O. A. Siddiqui a/w Mr. Kamran Shaikh for applicant.
Mr. H. J. Dedhia, APP for State.

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

AUGUST 11, 2015.

P.C.

1. Heard learned counsel for the applicant and learned APP.
2. In this case as evidence began almost after 20 years, the Investigating Officer, who has passed away in the meanwhile, has not been examined. Facts show that though prosecution alleges recovery from present applicant, no blood stains are reported so as to connect the recovered articles with the present crime. No report of Chemical Analyzer was filed with the charge-sheet.

3. PW 1 is the owner of petrol pump and PW 3, aged about 98 years, is witness on recovery panchanama. PW 3 has stated that he has not witnessed anything. Evidence of these two witnesses is, therefore, not helpful. Learned APP has placed reliance on evidence of PW 2 who has been examined to support finding of a decomposed body at the instance of present applicant. However, said PW 2 identified a wrong person (Prabhakar Gaikwad) as accused at whose instance that beheaded body was found. Moreover, identity of beheaded body as driver of truck has not been established.

4. PW 4 has been examined as injured witness. He was in hospital as his throat was split for about 25 days. He has stated that four persons climbed the truck, but he has not pointed out in his deposition that present applicant was one of them. He has also deposed that he was blindfolded and thereafter everything happened. Though he claims to have identified present applicant in Test Identification Parade, in cross-examination he accepted that he could not give description of accused to police, as he has not seen him properly when the incidence occurred.

5. Applicant has been arrested on 11/5/1989 i.e. almost three weeks after the incidence.

6. In this situation, we are inclined to grant bail to present applicant. It is to be noted that he was on bail during trial also.

7. In this situation, applicant is released on bail on same terms and conditions as imposed by trial court during pendency of his appeal subject to execution of fresh bonds which shall also contain an undertaking that he shall report once in a period of every two months on first Monday as per convenience of trial court in that court. Failure to so report shall be construed as breach of bail conditions and shall automatically result in cancellation of bail. Application is accordingly allowed.

(A. S. GADKARI,J.)

(B. P. DHARMADHIKARI,J.)