

JPP

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION**

**CRIMINAL APPLICATION NO. 616 OF 2015
IN
CRIMINAL APPEAL NO.377 OF 2015**

Shrinivas @ Shenu Shirsappa
Ayyappa Swami.

... Applicant.

V/s.

The State of Maharashtra.

... Respondent.

Mr. Sanjiv Punalekar i/b. Mr. Prakash Salsingikar for the
Applicant.

Mrs. Sangeeta D. Shinde, APP for the State.

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

AUGUST 07, 2015.

P.C. :-

Heard. Applicant/Appellant seeks bail.

2. Submissions that theory of last seen is erroneously extended to Appellant/Accused No.1 and in any event he was not seen with deceased in or about close proximity of the time of finding of body. Body was found at a distance of about 12 kms. Next circumstance looked into by Trial Court is stated to be recovery of a rope allegedly used for strangulation from

Accused No.1 under Section 27 of Evidence Act. Submission is Trial Court has concluded that said recovery is from a place near the place where dead body was found. As spot panchnama itself has not been proved on record, the place where body was found has not come on record and therefore, this finding is perverse. Lastly, it is submitted that motive is also based upon an old alleged incident and hence, it has no link with the crime.

3. Learned APP has opposed these submissions. She has pointed out that Witness No.7 has specifically seen Appellant/Applicant following deceased and Accused No.2 in the previous act after 11.30 p.m. and body has been found in next morning. It is further pointed out that recovery is under Section 27 of Evidence Act from Accused No.1.

4. After hearing respective Counsel we find that evidence about recovery under Section 27 of Evidence Act needs to be independently viewed at least at this stage. The nearness of place where alleged rope was found cannot have any impact on its consideration as a circumstance.

5. Similarly, evidence of PW-7 shows that he saw Accused No.1 following Accused No.2 and deceased in previous night. Body has been found in the morning thereafter.

6. In this situation at this stage we cannot delve more into evidence. Hence, we reject bail application. However, hearing of Appeal is expedited.

(A.S. GADKARI, J.)

(B.P. DHARMADHIKARI, J.)