

Anand

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

BAIL APPLICATION NO.1202 OF 2015

Smt. Aarati alias Madhu Saroj .Applicant
Jadhav

v/s.

The State of Maharashtra .Respondent

Mr.B.J.Sarwade, Advocate, for the Applicant
Mrs.P.P.Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 27.10.2015

P.C.

. Heard learned counsel for the applicant
and the learned APP for the respondent – State.

2. By this application, the applicant
seeks her enlargement on bail in connection with
C.R.No.535 of 2014 registered with the Santacruz
Police Station, Mumbai, for the alleged offences
punishable under Sections 201, 302 & 328 of the
Indian Penal Code.

3. The incident in question has taken place on 12.09.2014 at about 1.45 p.m. in the afternoon. The complainant is one Raju Brahma Sharma, a neighbour, residing near the room where the alleged incident had taken place. According to him, when he was on his way to visit his friend, he noticed that several people had gathered outside Room No.129, Indira Nagar. He, therefore, went near the said room and noticed that smoke was coming out of the said room and that the door was locked from outside. Hence, with the help of his friends, they broke open the lock and entered the room. They noticed that one person was wrapped in a cotton mattress and that smoke was coming from within. Police came on the spot and all extinguished the fire by sprinkling water. They noticed that the said person was without clothes and that he was strangulated with a rope. Pursuant to the same, the aforesaid complaint came to be lodged as

against unknown person/s.

4. Learned counsel for the applicant submits that the entire prosecution case rests on circumstantial evidence. He submits that there is no material qua the applicant to connect her with the alleged offences, in the form of last seen, motive etc. He submits that there is an alleged recovery of the police batch and an identity card of the deceased, at the applicant's instance. He submits that apart from the said evidence, there is no other material against the applicant.

5. Learned APP opposed the bail application. He does not dispute that the case rests on circumstantial evidence. He submits that there are witnesses, who have identified the present applicant; one Javed Khan, who had given the said room on rent to the applicant on

05.09.2014. According to the said witness, the room was given on rent pursuant to an oral agreement; and the other two witnesses Nagraj Shetty and Vishwakarma, had seen the present applicant on 10.09.2014, two days prior to the incident taking the mattress in an Auto Rickshaw and going towards one lane. She submits that there are CDR records to show that the applicant and the deceased were in touch with each other, however not on that day and time.

6. Perused the charge-sheet. Admittedly, the prosecution case rests on circumstantial evidence. It appears that there is no motive, at this stage, which has come on record against the applicant. The person, who has identified the present applicant i.e. Javed Khan states that he had given a room where the body was found to the applicant on 05.09.2014. There is no documentary evidence in support of the same. Similarly, the

other two witnesses, who have identified the present applicant have stated that they had seen the applicant, two days prior to the incident, traveling in an Auto Rickshaw carrying the mattress. It appears that the CDR records, do not prima facie, show the location of the applicant at the spot, at the time when the alleged incident took place. The only material as against the applicant appears to be recovery of police batch and the identity card of the deceased. Learned APP states that the applicant is a resident of Bihar and has no permanent residence in Maharashtra. Learned counsel for the applicant submits that stringent conditions may be imposed in the event, this Court comes to the conclusion that a case for bail is made out.

7. Considering what is stated above, the application is allowed and the applicant is enlarged on bail on the following terms &

conditions:

ORDER

(i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount;

(ii) The applicant shall attend the Santacruz Police Station, Mumbai on every Wednesday and Sunday between 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The applicant shall inform her latest place of residence and mobile contact number within two weeks of her release and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial;

(vi) The applicant shall not leave Mumbai city without the prior permission of the trial Court;

(vii) An undertaking to the aforesaid clauses (ii); (iii); (iv); (v); and (vi), shall be filed by the applicant, in the trial Court, within two weeks of her release;

(viii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the

observations made in this order.

All concerned to act on the
authenticated copy of this order.

(REVATI MOHITE DERE, J.)