

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.2043 OF 2014

Mr. Jitendra Jagdish Dubey	 Applicant
Vs.	
The State of Maharashtra	 Respondent

Mr. Sunny Singh i/b Mr. Rishi Bhuta & Mahesh Patil
for the Applicant
Mrs. Rutuja Ambekar, APP, for the Respondent-State.
Mr. K.B. Patil, PSI, present.

CORAM: P.D. KODE, J.

DATED: JANUARY 07, 2015

PC:

1. By this application the Applicant, charge-sheeted by Dahisar Police Station for commission of offences under sections 302, 307 and 397 has prayed for bail. The offence in question was registered upon the FIR lodged on 30.4.2013 at 04.55. hours by husband of the victim regarding an incident which had occurred at his residence in his absence on the same day in the midnight at about 03.00 hours. It reveals that he had received information about occurrence of the incident in which the Applicant had assaulted his wife Sanju and ran away, from one Karia @ Anil - child of his relative - on Mobile Phone. It reveals that thereafter he had asked his brother Umesh to rush to his house to ascertain the happenings. It reveals that thereafter the brother had found that Sanju had sustained injury on her head and she was unconscious. He had taken

her to Bhagwati Hospital. The First Informant, after reaching the Hospital, found that his wife was dead.

2. Mr. Sunny Singh, learned counsel for the Applicant, has submitted that involvement of the Applicant rests upon statement of so called eye-witness, i.e. the daughter of the brother of the First Informant. It is urged that even though the daughter of the First Informant was also present in the house, her statement has not been recorded. Learned counsel for the Applicant, thereafter, by inviting attention to statements of eye-witness recorded on 30.4.2013 and 30.5.2013 submitted that there is a variance in the matters stated in said statements. It is his submission that the statement dated 30.4.2013 reveals a claim of the eye-witness of having seen the Applicant assaulting the deceased by means of brick by sitting on her body. It is submitted that while the story contained in the statement dated 30.5.2013 is different, in as much as the claim staked therein is to the effect of said witness having awoken after hearing some sound and found that somebody was sitting on the back of her aunt hitting with a stone and thereafter due to fear she had enquired as to who was it and said person had replied of himself being Jitendra - the Applicant.

3. Learned counsel for the Applicant submitted that it is highly improbable that the culprit will disclose his name, if at all he was committing such an act and as such the matters in said statements are of

an artificial nature. It is submitted that it is difficult to perceive that the culprit committing such a heinous act will leave behind the eye-witness alive. It is submitted that thus the material relied upon by the prosecution is of an incredible nature and as such the Applicant deserves to be released on bail.

4. Perusal of the first statement dated 30.4.2013 undoubtedly reveals involvement of the Applicant and the acts committed by him amounting to the offence of murder. Having regard to it, merely because in the second statement some detailed version has been given by a child witness cannot lead to a prima facie conclusion of the material being of incredible nature and/or the Applicant being falsely implicated. Since age of daughter of the First Informant is of three years, grievance of not considering her statement is futile. Thus, considering the material available against the Applicant in the charge-sheet and the same disclosing his involvement in the commission of the offences, which are punishable with death or imprisonment for life, it is difficult to accede the prayer for bail.

5. Resultantly, the application stands rejected.

(P.D. KODE, J.)