

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

BAIL APPLICATION NO.1775 OF 2015

Mr. Swaminath H.Gupta. ...Applicant.
vs.
The State of Maharashtra.Respondent.

Ms.Anjali Patil for the Applicant.
Ms. Rutaja Ambekar, A.P.P. for the State.

CORAM : A.S. GADKARI, J.**DATE : 11th December 2015****P.C. :**

The applicants are seeking bail in CR No.I-136-14 registered with NRI Sagari Police Station, Navi Mumbai under section-302, 376,301,203 read with 34 of the I.P.C.

2) It is the case of the prosecution that co-accused Dwarkaprasad Gupta was in relation with deceased namely Smt. Surekha Atangale. That, on 11.9.2014, co-accused Dwarkaprasad along with deceased and her minor daughter came at the residence of the applicant at Belapur Gaon for over night stay. That, thereafter, late in the night the applicant and co accused Dwarkaprasad committed forcible sexual intercourse with the said Surekha and with a fear that deceased will inform the said fact to others they committed

her murder by strangulating her. After the investigation charge sheet has now been filed.

3) The present case is based in circumstantial evidence. The prosecution has relied on two circumstances against the present applicant. The first one is extra judicial confession given by the co-accused namely Dwarkaprasad to his uncle on telephone. In the alleged extra judicial confession given by the co accused he has stated that on that fateful night the present applicant committed sexual assault on the deceased and when she stated screaming and gave a threat that she will report the said fact to the police the present applicant pressed her neck. He has also stated that at the relevant time he had pressed her mouth. Prima face, it appears that the said extra judicial confession as far as present applicant is concerned is materially exculpatory. The said extra judicial confession is given on telephone and prima facie it creates doubt about its genuineness. The next circumstance put forth by the prosecution is of CDR record. The said CDR record of the phone calls of the two accused has been certified to be true and genuine. The investigating Officer has received the certificate of its authenticity as contemplated under section

65(B) of the Evidence Act. However, it is noted to be here that as the applicant, co-accused and deceased were knowing each other placing reliance on the CDR record on the inter-se phone calls may perhaps not help the prosecution. In view of the above, the applicant has made out a case for grant of bail. Hence, I pass the following order.

ORDER

- a) The applicant shall be released on bail in CR No.I-136 of 2014 registered with NRI Sagari Police Station, Navi Mumbai on his furnishing PR bond of Rs.50,000/-with one or two solvent sureties in the like amount.
- b) After release from Jail the applicant shall report to the NRI Sagari Police Station on every fortnight on Monday between 10.00 a.m. to 1.00p.m.
- c) The applicant shall not tamper the prosecution evidence and/or influence the prosecution witnesses.
- d) After release from jail the applicant shall submit the documents of his residential proof to the NRI Sagari Police Station and/also the trial court.
- e) Application is disposed of in the above terms.

(A.S. GADKARI, J.)