

JPP

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

**CRIMINAL APPLICATION NO. 1374 OF 2014
IN
CRIMINAL APPEAL NO. 802 OF 2014**

Bharat Singh Buta Singh Rathod. ... Applicant.

V/s.

The State of Maharashtra. ... Respondent.

Mr. Shau i/b. Mr. Omkar Gopal Nagwekar for the Applicant.
Mrs. S.D. Shinde, APP for the State.

**CORAM : P.V. HARDAS &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.**

JANUARY 06, 2015.

P.C. :-

This is an Application filed by the Applicant/Accused seeking suspension of the substantive sentence of imprisonment and his enlargement on bail pending the decision of the Appeal. The Applicant stands convicted for offence punishable under Section 302, 376 (2), 363 and 201 of the Indian Penal Code, by the Additional Sessions Judge, Thane by Judgment dated 19.7.2014, in

Sessions Case No.354 of 2012.

2. The case against the Applicant is based on circumstantial evidence. The prosecution had alleged that the Applicant had committed murder of deceased Meghana, a minor girl of 12 years between 6.30 p.m. and 10.00 p.m. The circumstances which were found established by the Trial Court were : (1) that the accused was residing in the room. PW-9 Jagannath, father of the landlady had deposed that the accused was residing in the said room as a tenant; (2) the deceased and the accused were last seen together by PW-2 Santosh and PW-11 Manoj; (3) a gunny bag containing the dead body of deceased Meghana was found just beneath the window of the room of the accused. The evidence of the prosecution further discloses that no iron grills had been fitted to that window; (4) on the search of the room, the clothes and the salary certificate of the accused were found as well as the school bag, clothes and the chappals of the deceased. A blood stained bed sheet and mattress was also found. The bed sheet was found stained with blood group matching that of deceased Meghana and had also semen stains matching

the blood group of the accused; and (5) the Applicant on his arrest was found to have sustained human bite marks which were fresh and could have been caused within 24 hours.

3. The learned Counsel for the Applicant has urged before us that there were no evidence that the dead body had been thrown by the Applicant as throwing of the dead body from the window would have attracted the attention of the other residents. It is also urged before us that the Applicant has been falsely implicated. It is also urged before us that the Applicant was at Burhanpur at the time when the offence was committed. At this juncture we may state that the evidence in respect of the alibi was made by the Applicant. Reliance was made on the Judgment of the Supreme Court in **Sattatiya alias Satish Rajanna Kartalla v/s. State of Maharashtra [(2008) 3 SCC 210]** to urge before us that the recovery of the clothes of the deceased as well as school bag and the clothes of the accused are not preceded by a disclosure memorandum of the Applicant under Section 27 of the Indian Evidence Act.

The learned APP has urged before us for dismissal of this Application on the ground that a strong prima-facie case has been made out against the Applicant. The circumstances so proved by the prosecution unerringly point to the guilt of the accused. Moreover, it is urged before us that the Applicant was not on bail during trial. The learned APP has further urged before us that the Applicant has not led any evidence to establish the alibi.

4. With the assistance of the learned Counsel for the parties, we have examined the findings recorded by the Trial Court. The discovery of the school bag, clothes and chappals of the deceased as well as the clothes of the accused was on the basis of the house search of the accused which was undertaken by the police. The aforesaid articles had not been seized on the basis of any disclosure statement made by the accused. The said seizure cannot therefore be termed as a discovery within the meaning of Section 27 of the Indian Evidence Act. In fact, the prosecution also does not claim that the said articles had been seized consequent upon any disclosure statement being made by the accused. The ratio of the Judgment of the Supreme Court therefore, in our opinion,

is inapplicable to the facts of the present case. The other submissions which have been advanced before us by the learned Counsel for the Applicant pertain to re-appreciation of evidence which cannot be done at this stage. Suffice it to state that in the light of the overwhelming evidence against the Applicant, we are not inclined to suspend the substantive sentence of imprisonment and release the Applicant on bail. Additionally, we find that the Applicant was not on bail during trial.

5. For the aforesaid reasons therefore, this Application is dismissed.

(DR.SHALINI PHANSALKAR-JOSHI, J.) (P.V. HARDAS, J.)