

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2268 OF 2014

Hitendra @ Chandani Hashmukh Damaniya	...	Applicant
vs.		
The Union of India & Anr.	...	Respondents

Mr. Niranjan S. Mundargi, Advocate for the applicant.
Mr. D.A. Nalavade, Advocate for respondent no. 1.
Mr. J.H. Ramugade, APP for the State.

CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 25th March, 2015.

P.C.

This Application is moved for bail, as the applicant/accused is prosecuted for the offences punishable under section 302 r/w. 201 of the Indian Penal Code in C.R. No. 15 of 2013 registered at Diu Police Station.

2. It is the case of the prosecution that one Somaibai, mother of the deceased Laxmibai, gave information to the police that her daughter Laxmibai was missing from 3rd September, 2013. Her daughter was staying at London and she came to Diu on 8th August, 2013 along with her children. She was to go back to London on 4th September, 2013. However, she did not return back on 3rd September, 2013 and her body was found floating in the well at Malala. The cause of her death, as per

post-mortem report, was due to asphyxial due to drowning with head injury. The police during the course of investigation recorded the statement of the witnesses and found that previously the applicant/accused was having love affair with the deceased lady and as he was in need of some money, so she lent her gold necklace to him. After some days when the deceased started demanding her gold necklace back, the applicant/accused murdered her. Thereafter, he was arrested on 13th September, 2013. Hence, this Bail Application.

3. The learned counsel for the applicant/accused submitted that there is no direct evidence against the applicant/accused. The statement of the witnesses disclose that there is evidence of last seen together and the deceased has disclosed to one of the witnesses that she would be contacting the applicant/accused to get her necklace back. He submitted that there is no recovery from the applicant/accused. A gold necklace was found from Veer Singh, however, it is a different necklace. He submitted that under this circumstances, there is no connection between the commission of offence and involvement of the applicant/accused.

4. The learned APP relied on the affidavit of the Investigating officer Manoj S. Patel, P.I. from Diu Police Station. He submitted that the prosecution relies on the statement of the witness and also evidence of

last seen together. He also relied on the PM report.

5. Perused the FIR. Perused the statement of star witness Unisbhai Hussainbhai and also the statement of Virsingh from whom the necklace was recovered and he has purchased the necklace from Unisbhai and Hussainbhai. Read the statement of Shantaben Bamaniya. There is no evidence against the applicant/accused that he was interested in the gold necklace. There is no direct evidence but the case is based on the circumstantial evidence. In view of this, considering that the applicant/accused is in prison since 13th September, 2013, I am inclined to grant bail to the applicant/accused on the following terms and conditions:

ORDER

- (i) The Application is allowed.
- (ii) The applicant/accused is released on bail on furnishing P.R. Bond in a sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant/accused shall not indulge into any kind of criminal activity.
- (iv) The applicant/accused shall make himself available and attend all the Court dates.
- (v) The applicant/accused shall not abscond and furnish

his permanent address to the police along with address proof.

(vi) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

(vii) The police and the trial Court to take note that the passport of the applicant/accused is to be seized and it is to be communicated to the Portuguese Embassy and the Passport office that the applicant/accused is facing trial and is required.

(viii) The applicant/accused shall not leave India without the prior permission of the Court.

6. The Application stands disposed of on above terms.

(MRS. MRIDULA BHATKAR, J.)