

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1327 OF 2015
IN
CRIMINAL APPEAL NO.1029 OF 2015
IN
SESSIONS CASE NO.290 OF 2014

Raju @ Razwa Bhadairam Jaiswal

.... Applicant

Versus

State of Maharashtra

(At the instance of Pant Nagar Police Station,
Ghatkopar, Mumbai)

.... Respondent

Ms. Anjali Patil for the Applicant.

Mr. H.J. Dedia, A.P.P., for the Respondent-State.

CORAM : SMT. V.K. TAHILRAMANI, ACTING C.J. &
DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 27TH NOVEMBER 2015.

P.C. :

1. This Criminal Bail Application is preferred by original Accused No.2 seeking suspension of substantive sentence of imprisonment and his enlargement on bail during pendency of the Appeal.

2. The Applicant has been convicted, along with two other co-accused, for the offences punishable under Sections 376D, 377 and 302 r/w. 34 of the IPC. On each of the count, the Applicant has been sentenced to suffer imprisonment for life and to pay fine.

3. As per prosecution case, the Deceased in the case, by name Lalita Mohan Rao, aged about 55 years, was residing on the foot-path in front of shop of PW-7 Amarjeet Singh Sardar Singh Banga at Ghatkopar-Andheri Link Road, near Rishi Baik Bazar. She was collecting the garbage and scraps and sleeping on the foot-path. The Applicant and other co-accused were also residing in the same area and sleeping on the foot-path. They were also doing the work of collecting garbage and scraps. As per evidence of PW-7 Amarjeet Singh, they used to harass the Deceased. On the night of 31st December, 2013, the Deceased was found to have succumbed to the murderous assault. Her dead body was then taken to the hospital and it was found that she was subjected to sexual assault (unnatural sex) and the cause of her death was head injury. The Applicant along with other co-accused was then prosecuted for the aforesaid offences.

4. Though prosecution has examined in this case as many as 16 witnesses, the only circumstance on which the prosecution is relying against the Applicant is recovery of his clothes at his instance, under Section 27 of the Evidence Act, on which human blood stains were found and the fact that he was found in the area where the Deceased used to sleep and after the incident, he was not seen there.

5. In our considered opinion, these two circumstances alone are, prima facie, not sufficient to implicate the Applicant; especially, when PW-5 Santosh Mane, Panch to the Memorandum and Recovery Panchanama of the clothes of the Applicant, has not supported the prosecution case and he is declared hostile and, secondly, because the C.A. Report reveals that the results of the blood group of the blood stains found on the clothes of the Applicant/Accused were inconclusive.

6. As regards the second circumstance, that of the evidence of PW-7 Amarjeet Singh that Applicant/Accused and other co-accused

used to harass the Deceased and after the incident, they were not found in the area, is hardly any incriminating in nature so as to implicate the Applicant.

7. In view thereof, we are of the considered opinion that present application for bail deserves to be allowed.

8. Hence, the Criminal Bail Application is allowed. Substantive sentence of imprisonment imposed on the Applicant is suspended. Applicant is released on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount subject to condition that he shall give attendance at Pant Nagar Police Station, Ghatkopar (East) Mumbai once in two months, on first Monday, during the pendency of the Appeal.

9. Bail in lower Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [ACTING CHIEF JUSTICE]