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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2005 OF 2016

Samir s/o Noormiya Killarikar,
Age: 36 years, Occ: Labour & business,
R/o. Chaudhari Nagar, Latur.

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr. R.R. Deshpande, Advocate h/f Mr. C.R. Deshpande, Advocate for
applicant;
Mr. A.B. Girase, Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 24th JUNE, 2016

ORDER :

The applicant is seeking regular bail in Crime No. 80 of 2014 registered with M.I.D.C. Police Station, District Latur, for offences punishable under Sections 302, 364, 354(A), 376, 203, 201, 120-B read with Section 34 of the Indian Penal Code.

2. The alleged incident took place on 21/03/2014 to 23/03/2014. The prosecution story is that the complainant Mangal Giri had a daughter by name Kalpana, who was educated and was office bearer of Youth Congress in Latur. It is then alleged in the first information report that she left her house on 21/03/2014 and did not turn up, resulting into lodging of complaint of missing on 22/03/2014. On 23/03/2014 her dead body was discovered and it was noticed that she was murdered, resulting into

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registration of crime in question.

3. Upon investigation, it is noticed that the applicant along with other five accused are involved in the crime in question. It is the case of prosecution that accused Mahendrasing was having love affair with Kalpana, was reluctant to marry her. Since accused Mahendrasing was already married, he along with present applicant and other accused hatched conspiracy on 21/03/2014 i.e. on the day of *Holi* festival in Hotel Nartaki on 21/03/2014 and took her to a water tank by name *Pachunda Talav* committing rape and drowned her.

4. The applicant came to be arrested in the crime in question on 29/03/2014.

5. Learned Counsel for the applicant, while trying to make out case for grant of bail, would urge that the applicant is entitled to be released on bail as the investigation in the matter is already over and charge sheet is filed. According to him, the entire case is based on circumstantial evidence and as such, further detention of the applicant is not necessary. He would then urge that other accused persons namely Kuldeepsing Thakur and Prabhakar Shetty are already released on bail. He claims parity. It is brought to the notice of this Court that post mortem report in relation to death of Kalpana speaks of death due to drowning (asphyxia). He would submit that it is not homicidal death and as circumstantial evidence as is available against the present applicant, do

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not connect the applicant to the crime in question, hence he be released.

6. He would then invite attention of this Court to the investigation papers so as to urge that the chain of events so as to connect the present applicant to the crime in question is not complete and it does not point finger of guilt as against the applicant. According to him, out of six accused, three are already released on bail. He would then invite my attention to D.N.A. report, which according to him, though depicts involvement of the applicant, cannot be relied upon. He questions method of sample drawing for the same. For protracting the trial, the applicant cannot be blamed and he be released on bail.

7. Learned A.P.P. opposed the application on the ground that there is sufficient material available on record to connect and demonstrate *prima facie* involvement of the applicant in the crime in question. He would then submit that forensic science laboratory has drawn swab from vagina of deceased Kalpana in a test tube and result of analysis of the same depicts *prima facie* involvement of the applicant in the crime of rape. He would then invite attention of this Court to other material on record, which includes receipt issued at toll collection booth so as to identify vehicle location in which the applicant was travelling and according to him, the applicant was found to be accomplice of main accused Mahendrasing with deceased Kalpana. He would then submit that in the identification parade, the applicant was very much identified as accomplice by the toll booth attendant and there is recovery of vehicle and other incriminating material

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from the applicant. It is then brought to the notice of this Court that there is discovery under Section 27 of the Evidence Act against the applicant and the applicant was instrumental in giving threats to the complainant after commission of crime in question.

8. With the assistance, I have perused the entire investigation papers including that of charge sheet filed on record. It is required to be noted from record that learned Sessions Judge, while rejecting the application on 24/06/2015, has given detail reasons, which in my opinion, appear to be germane to the cause for rejection of bail, as same are based on the material available on record.

9. It is to be noted here that from record it appears that all the accused hatched conspiracy at Hotel Nartaki and in furtherance thereof, on 21/03/2014 accused Nos. 1 and 2 i.e. present applicant along with Mahendrasing took Kalpana at *Pachunda Talav (water tank)* and committed her murder. A missing complaint was lodged by family member of Kalpana on 22/3/2014 with police and her dead body was found on 23/03/2014, which was identified by family members on 24/03/2014. It is required to be noted that conspiracy in the present crime appears to be in three parts (a) on 20/03/2014 (b) after death of Kalpana by producing another person as a culprit and (c) when the complaint was lodged against the Investigating Officer by witness Khandu Magar at the behest of accused persons to deter him from carrying out investigation against them.

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10. There is enough material on record noticed in the investigation so as to infer that on 21/03/2014 deceased Kalpana was in the company of applicant and was last seen together. There was call record between the applicant and main accused Mahendrasing. The statements of other witnesses namely Amarpali Bhosale and Ramkrishna Manohar Mane speak about car parking in front of Hotel Nartaki and thereafter accused Nos. 1 and 2 along with deceased Kalpana standing near the car.

11. The blood sample, vaginal swab of deceased Kalpana was sent for chemical analysis and report speaks of direct involvement of the present applicant in the crime in question. D.N.A. report clearly indicates that D.N.A. of the semen of the accused-applicant is matched with that of D.N.A. of semen found in the vaginal swab of deceased Kalpana.

12. Apart from above, it is required to be noted that the applicant is also trying to influence the witnesses as is apparent from the report submitted by forensic science laboratory in relation to auditory analysis of recorded voice of present applicant. The said report speaks voluminous about conduct and involvement of present applicant in the crime in question.

13. Apart from above, learned A.P.P. has brought to my notice the *Roznama* of the trial maintained by the Court below. It is the prosecution case that all the accused persons hatched conspiracy and have committed

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crime in question. In the above referred back ground, if *Roznama* is perused, all the accused persons, in a calculated manner, are prolonging the trial, though same is already expedited. The accused persons either are remaining absent or have taken recourse to the proceedings before High Court seeking discharge.

14. In my opinion, in this background, claim for speedy trial is right of accused and if there is delay, he is entitled to pray for bail, particularly in view of law laid down by this Court in the matter of ***Rajdev Kumar Mathura Yadav @ Pappu vs. State of Maharashtra*** reported in ***ALL MR (Cri)-2010-2-1466*** will hardly be of any assistance.

15. Apart from above, it is to be noted that the applicant's case cannot be treated at par with that of other accused i.e. Kuldeepsing Nagusing Thakur, Prabhakar Jayram Shetti and Suvarnasing @ Shrirang Kishansing Thakur, when D.N.A. report and other material depict availability of *prima facie* evidence against the applicant-accused.

16. For the aforesaid reasons, the application fails, same stands rejected.

(N.W. SAMBRE, J.)

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