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

CRIMINAL APPLICATION NO. 2110 OF 2016

Mahadev s/o Raosaheb Yevatkar,
Age: 27 years, Occu: Agri.,
R/o Palsap, Tq. & Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr S. T. Veer, Advocate for applicant;
Mr A. S. Shinde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 27th June, 2016

ORDER :

The applicant is seeking his release on regular bail, in connection with Crime No. 83 of 2015, registered with Dhoki Police Station, Dist. Osmanabad on 29th October, 2015, for the offences punishable under Sections 302 and 201 of the Indian Penal Code.

2. The prosecution story is that the applicant is a real brother of deceased Alka Pramod Gaokare and he has murdered Alka and her daughter Neha by smothering them, as she was asking share in the property.

3. The entire case is based on the circumstantial evidence.

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4. While trying to make out a case for grant of regular bail, Mr Veer, learned Counsel would submit the applicant is falsely implicated in the crime in question and he was arrested on 1st November, 2015. According to him, the investigation in the matter is completed as the charge-sheet is filed and in absence of any criminal antecedents and the case, being based on circumstantial evidence, the applicant is entitled to be released on bail.

5. Mr Shinde, learned Additional Public Prosecutor strenuously opposed the application on the ground that, there are strong incriminating circumstances noticed during the investigation, depicting prima facie involvement of the applicant in crime in question. He would then take this Court to the motive attributed to the applicant, discovery under Section 27 of the Indian Evidence Act and history of the case, which prompted the applicant to commit crime in question.

6. With the assistance of respective Counsel, I have perused the entire charge-sheet in the matter and medical evidence placed on record.

7. Prima facie, it is required to be noted that the deceased Alka came in the field where her brother-applicant was working and it is claimed that there was quarrel between them. It is also required to be noted that mother of deceased, namely, Daivshala, in whose statement, it is very much reflected that she enquired with present applicant about deceased Alka.

(3)

The response of the applicant to the said query was not appearing to be abnormal, as reflected in the said statement. Apart from this, motive attributed to the applicant is that the deceased alka was demanding share in the property, though she was married.

8. In my opinion, the motive, as is attributed does not speak of any intention on the part of the applicant, to commit crime in question. The last seen theory, as is relied upon, is based on the statements of the witnesses Ushabai and Suvana, which does not speak that there were any extreme differences between applicant and deceased, which has prompted the applicant to take the steps, particularly, in view of narration of Daivshala i.e. his mother.

9. The injuries, as are noticed, claimed to have been caused by stone, however, the said attribution of injuries caused by the present applicant goes contrary to the inference of death by smothering. Investigation in the matter depicts that the Investigating Officer was of the opinion that instead of rope i.e. discovery under Section 27 of the Indian Evidence Act, a saree could have been used and recovered in crime in question.

10. The evidence, as is brought on record, in my opinion, does not prima facie depicts involvement of the applicant in the crime in question. The entire case is based on circumstantial evidence.

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11. In the above background, in my opinion, the applicant is entitled to be released on bail. Hence I pass following order.

The applicant be released on bail, in connection with Crime No. 83 of 2015, registered with Dhoki Police Station, Dist. Osmanabad, for the offences punishable under Sections 302 and 201 of the Indian Penal Code, upon furnishing P.R. Bond of Rs 15,000/- with one surety in the like amount. The applicant shall not tamper with the prosecution evidence and witnesses.

Criminal Application stands allowed in above terms.

The observations made hereinabove are prima facie in nature.

(N.W. SAMBRE, J.)

sjk