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

CRIMINAL APPLICATION NO.2521 OF 2016

Nayyum s/o Yasin Shaikh

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr Satish A. Gaikwad, Advocate for applicant;
Mr S.Y. Mahajan, Addl. Public Prosecutor for respondent;
Mr N.S. Ghanekar, Advocate holding for Ms Varsha S. Ghanekar,
Advocate for complainant

CORAM : N.W. SAMBRE, J.

DATE : 4th July, 2016

ORAL ORDER :

By the present application under section 439 of the Code of Criminal Procedure, the applicant seeks his release on bail, in connection with C.R. No.899 of 2015, registered with Mukundwadi police station, Aurangabad, for an offence punishable under section 302 of the Indian Penal Code, for an incident alleged to have taken place on 28th November, 2015.

2. Prosecution case against the applicant is that the applicant's brother-in-law expired about two years back leaving behind house property, which was hired by the applicant by establishing illicit relations with the wife of his brother-in-law and on 28th November, 2015, in the wee hours, the applicant strangled her. As such, crime in question.

3. It is claimed that the applicant himself confessed the crime to his son by giving him a call and as such, the investigation went in the said direction.

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4. The applicant came to be arrested in the crime in question on 2nd December, 2015. The investigation in the matter is complete and charge-sheet is already filed.

5. Mr Gaikwad, learned Counsel appearing on behalf of the applicant, while trying to make out a case for grant of regular bail, would submit that the story narrated in the statement of eye-witness Shaikh Mubarak, recorded on 7th December, 2015, appears to be an improbable case. He would then submit that if the said statement is ignored, the case is based on circumstantial evidence and there is hardly any material to connect the applicant to the crime in question. So as to substantiate his contention, he has taken me through statements of the witnesses, i.e. son and daughter of the deceased, statements of the sisters of husband of the deceased and their family members.

6. Learned Addl. Public Prosecutor opposed the application on the ground that there is sufficient material to connect the applicant to the crime in question, including that of the eye-witnesses to the incident. Learned Addl. Public Prosecutor is assisted by learned Counsel Mr Ghanekar for the complainant. Both have strongly relied upon the CDR report of the accused person and mobile number used by the applicant and his son. Learned Addl. Public Prosecutor then would urge that the history as is reflected in the statements of the witnesses depicts that the applicant is involved in the crime in question.

7. Having bestowed my thoughts to the submissions made, it is to be noted that the statement of the eye-witness is recorded after five days of the incident and he speaks of witnessing the incident. Perusal of the statement of said eye-witness, in my opinion, does not repose confidence in the prosecution.

8. Apart from above, perusal of the statement of the daughter of the victim speaks of enmity between the applicant and the deceased over the

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property in question. He then speaks of death of grand-mother some four months back, who was managing the entire property and parting the income derived therefrom to the daughters. It is then to be noted that after the death of grand-mother, the victim has stopped parting the income with sisters of her husband.

9. In the above background and having regard to the nature of evidence available on record and absence of criminal antecedents as also the fact that the investigation is complete and charge-sheet is already filed, in my opinion, the applicant deserves to be released on bail. I, therefore, pass following order :-

The applicant be released on bail, in connection with C.R. No.899 of 2015, registered with Mukundwadi police station, Aurangabad, for an offence punishable under section 302 of the Indian Penal Code, for an incident alleged to have taken place on 28th November, 2015, on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicant shall not enter the jurisdiction of the concerned police station till conclusion of the trial.

The above observations are *prima facie* in nature.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj