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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 132 OF 2015

Santosh Sukhdeo Borkar .. Applicant

Vs.

The State of Maharashtra .. Respondent

Mr. G.S.Jadhav, Advocate for the Applicant.
Mr.A.Sait, APP for State.

CORAM : REVATI MOHITE DERE, J.
DATED : 18th MARCH, 2016

P.C.

. Heard learned Counsel for the applicant and learned APP for the State.

2. By this application, the applicant seeks his enlargement on bail in connection with the C.R. No. 95 of 2014, registered with Natepute Police Station, Tal- Malshiras, Solapur, for the alleged offences punishable under sections 302, 201, 363 read with 34 of the Indian Penal Code.

3. The incident took place on 23/05/2014; a missing complaint was lodged on 25/05/2014 by the brother of the deceased; and the FIR was lodged on 02/06/2014 by the husband of the deceased. It is alleged in the complaint, that the deceased was having an affair with the applicant and that he was regularly visiting

the house of the deceased. The husband of the deceased i.e. first informant was at Salem in Tamilnadu, at the relevant time. He has stated that he learnt from his son, Prem that the applicant was regularly visiting the house; that there was some relationship between the applicant and the deceased; and that the applicant had threatened Prem and his sister that they should not disclose to anyone, regarding his visits. According to the complainant, his son Prem disclosed him that on 23/05/2014, the applicant had come to their house; that there was quarrel between the applicant and the deceased, and that both had thrown utensils at each other. It is further stated that thereafter, the deceased took the children and went to Palasmandal, where she dropped the children with her mother. Thereafter, the deceased went missing.

4. Learned Counsel for the applicant submitted that the entire prosecution case rests on the circumstantial evidence and that the only evidence as against the applicant is that of last seen. He submitted that initially, when the missing report was lodged on 25/05/2014, there is no mention of the applicant, having come to the house of the deceased; about the quarrel; and that the applicant had followed the deceased on his motorcycle. He submitted that the CDR records do not pin point the location of the applicant at the spot. He relied on a judgment of the Apex Court in the case of **Mohibur Rahman and another Vs. State of Assam, (2002) 6**

Supreme Court Cases 715 in support of his contention.

5. Learned APP opposes the bail application. He submitted that the statement of Prem, the son of the deceased, shows that the applicant had visited the house of the deceased on 23/05/2014; that there was quarrel between the applicant and his mother; and that after the incident, his mother had taken him and his sister on her two-wheeler, to their grandmother's house. He has further stated that the applicant alongwith an unknown person was following them, on his motorcycle. He also relied on the statement of Smt. Sugadabai Brahmadev Nitwe, which is on page 81 of the application, which shows that she had seen the deceased in the company of the applicant, at 4.30 p.m. on 23/05/2014. He submitted that there is statement of the owner of the Maruti Suzuki van, which is at page 88 of the application, which shows that the applicant had taken the Maruti Van from him on 23/05/2014. According to the learned APP, the said Maruti van was used for disposing of the dead body. He also relied on the statement of another witness, who has stated that he had seen two persons throwing the dead body. He further submitted that there is a recovery of clothes at his instance as well as stone, with which the applicant was done to death and other articles. He submitted that even the CDR record shows that the applicant was at the places/locations at the relevant time. He submitted that the CDR record clearly indicates that the applicant was present at the spots,

right from the house of the deceased till when the dead body was disposed of.

6. Perused the charge-sheet. The statement of Prem, son of the deceased, has specifically stated, that on 23/05/2014, the applicant had come to their house and that there was quarrel between the deceased and the applicant; and that thereafter, the deceased had taken them to their grandmother's house. He has stated that he had seen the applicant and another unknown person, following them on the motorcycle. It also appears, that one witness had seen the deceased last in the company of the applicant on 23/05/2014 at about 4.30 p.m. The cause of death is death due to head injuries. There is recovery of a blood stained stone at the instance of the applicant. The CDR records support the prosecution case.

7. Considering the material on record, this is not a fit case to enlarge the applicant on bail. Hence, the application for bail is rejected and is accordingly disposed of. However, the trial of the applicant is expedited.

(REVATI MOHITE DERE, J.)