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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.110 OF 2016
IN
CRIMINAL APPEAL NO.1167 OF 2015.

Atul Chandrakant Pawar Applicant.

V/s.

The State of Maharashtra Respondent

Mr. Ganesh Gole I/by Mr. Chandrakant N. Chavan, for the Applicant.

Mrs. A.S. Pai, APP for the Respondent-State.

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

DATE : 10TH FEBRUARY 2016.

P.C:

1. The applicant-original accused No.2, who has been convicted inter alia, for the offence punishable under Section 302 read with 34 of the Indian Penal Code and sentenced to suffer life imprisonment and fine, has preferred this application alongwith his appeal, seeking suspension of substantive sentence of imprisonment and for his release on bail during pendency of the appeal.

2. According to learned counsel for applicant, there is no reliable or convincing evidence on record against the applicant. The role of throttling the deceased is attributed to original accused No.1 Mangesh and accused No.3 Naina. So far as the presence of applicant is concerned, he is not implicated in the said act. Moreover, the entire case of prosecution stands on the evidence of a single eye witness. Hence according to learned counsel for applicant, applicant deserves to be released on bail.

3. However, the evidence of P.W.1 Kranti Desai, the niece of the deceased Kamla, who at the time of incident was sleeping with deceased in her house, discloses that the applicant was very much present alongwith co-accused and he has participated in the commission of the offence by lifting the deceased Kamala from the ground and keeping her on the cot and further by threatening P.W.1 Kranti of not disclosing the said fact to anyone, otherwise she and her mother will also be killed in the same manner. Further the evidence of P.W.11 Dr. Wathore disclosed that the cause of death was asphyxia due to smothering. The prosecution has also led evidence of P.W.5 Abdul Rehman Mohd. And P.W.6 Munawar Iqbal to show that after the incident,

applicant alongwith accused No.3 Naina had absconded and checked in Good-Luck Guest House at Mahabaleshwar.

4. In our considered opinion, having regard to this evidence clearly reflecting the common intention and equal participation on the part of applicant and co-accused Nos. 1 and 3 in committing murder of deceased, coupled with the fact that during pendency of the trial also, applicant was not on bail, his application for bail cannot be granted. Consequently application stands rejected.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]