

sheet, there is no evidence establishing involvement of applicant in the present Crime in any manner, though it is the case of prosecution that applicant had assisted accused No.1-Sunil in commission of murder of deceased Rama by strangulation in car and set her person on fire in a jungle area on the outskirts of Thane to destroy the evidence.

4 The learned counsel for the applicant had referred to various documents filed with the charge-sheet including additional statement of complainant, missing report filed by mother of deceased suspecting accused No.1-Sunil therein about two years prior to the incident along with statements of Kalpana, Sangita and Suvarna-sisters of deceased Rama and neighbours to establish that relations between co-accused No.1 and deceased were good, and they were residing together and, as such, there was no reason for accused Sunil to commit her murder nor for applicant Deepak to assist co-accused Sunil in commission of murder of Rama.

5 By referring to statement of Bindiya-wife of accused No.1 Sunil, it is submitted that she was not residing with her husband since prior to seven years of incident, and even on that count, there is no reason for applicant being brother of Bindiya to assist co-accused Sunil in any manner, much less in commission of murder of Rama. From the contents of statement of complainant, on the basis of which FIR is lodged and his additional statement together with statement of Joseph, it is pointed out that their statements do not corroborate with the description of car stated earlier by complainant in his report.

6 With reference to case of prosecution of involvement of applicant on the strength of Test Identification Parade, it is submitted that same is held after two years and as according to the prosecution case, the incident took place in the month of November 2013, there is no possibility of complainant and his companion Joseph identifying the applicant or co-accused, to whom they have identified after lapse of two years in Test Identification Parade. Application is, therefore, prayed to be allowed as case of prosecution is based on circumstantial evidence and on completion of investigation, charge-sheet is filed.

7 The learned Additional Public Prosecutor though has opposed the application, has admitted that case of prosecution is based on circumstantial evidence and there is no direct evidence against the applicant. It is, however, further contended that the circumstances establish involvement of applicant, along with co-accused No.1 Sunil in committing murder of deceased Rama by strangulation in Car and then throwing her dead body into jungle and destroying the evidence by pouring petrol and setting her on fire. To establish the involvement of applicant in this Crime, the learned Additional Public Prosecutor has submitted that as per the additional statement of complainant Kailash and the memorandum of Test Identification Parade involvement of applicant is clearly established and also by witness Joseph, who was with the complainant. The learned Additional Public Prosecutor then relied upon statement of Shailesh-original owner of car and had contended that when said car was sold to one Valenton Samson Gonsalves, it was golden in colour, however said car when came to be seized is stated to be of black colour and has thus attempted to

establish that on the day of incident i.e. on 29/11/2013, the car referred in report as of gray colour is the same car used by accused in commission of present crime.

8 In the background of submissions, as aforesaid, I have perused the report dated 29/11/2013 lodged by Kailash Patil, wherein he has stated that on that day at 6.00 a.m. when he along with Joseph had gone out for jogging at the outskirts of village Owali, they found one car, which was of Hyundai Accent make gray colour car, parked by the side of the road in dark and had noted flames at some distance from the car to its left side, and in the light of fire, he could see one person aged 20 to 25 years coming from the said fire and hurriedly entering into the car, which was immediately taken away from the spot by the person, who was already on the driver seat and went towards high-way side. On the basis of report, as aforesaid, offence came to be registered against unknown accused persons.

9 From the report, it also reveals that one Nandkumar Patil, Prakash Patil and Nitin Joshi were also jogging at the same time and had accompanied complainant to the spot, where they found one body being burnt and thus suspecting murder, they returned the village Owali and gave the information to Police Patil, who informed Narpoli Police on telephone.

 According to Final Cause of Death Certificate, deceased died of head injury with violent asphyxia as a result of compression of neck with associated postmortem charring of body with petrol (unnatural).

10 The learned counsel for the applicant had submitted that applicant is falsely involved on the mere suspicion of Kantabai Ghangaonkar-mother of deceased and by referring to her statement submitted that deceased was her youngest daughter, who was initially married with one boy from her village in 2005, however she did not continue with said marriage and within two months from marriage returned back to her mother and resided with her. In 2008, when she came in contact with co-accused Sunil, she started residing with him during which period she accompanied him at different places and in the month of June 2013 informed that she was pregnant when co-accused Sunil wanted her to terminate the pregnancy and used to quarrel with her on this issue. As per her statement, since October 2013, Rama did not meet her and on her visiting to the house of Rama i.e. in the house of co-accused Sunil neither of them were found present. It is further stated that on one occasion when she met co-accused Sunil and enquired about Rama, she was informed that he has made arrangement for her stay at Virar and assured that he would bring Rama to meet her. However, since he did not bring Rama to meet her on any occasion, on 21/03/2015 Kantabai-mother of deceased lodged missing report against Sunil. Fact of deceased being pregnant at the time of her death is supported by the finding in the Postmortem report.

11 In the background of statement of Kantabai, on perusal of statements of Kalpana, Sangita and Suvarna-sisters of deceased, it reveals that they find corroboration with the statement of Kantabai.

12 Similarly, from the statements of Nirmala Kadam, Nitu Kandra-neighbours of deceased it reveals that for a couple of month prior to incident, deceased was staying along with Sunil as their neighbour and after 2013 neither of them were found staying in that area. Referring to above statements, it is submitted that this fact is not sufficient to establish the involvement of applicant in present crime and in fact has rightly contended that if applicant is real brother of first wife of co-accused Sunil, who is stated to have indulged in extramarital relation with deceased, then in that event applicant would be the first person to not to assist or co-operate Sunil in any of his act, as alleged by prosecution.

13 On perusal of CCTV footage panchnama with regards to passing of one Hyundai make gray colour car from Kharegaon Toll Plaza relied by prosecution to establish that on the date of incident such car has passed the relevant road to proceed to the spot. No reliance can be placed on this piece of evidence in view of the fact that it is the case of prosecution that the car involved in the Crime is grey colour Hyundai Accent as referred in report, but during investigation what is seized is black colour Honda City car. On this aspect, the learned Additional Public Prosecutor though had relied upon the statement of Shailesh-original owner of said car contending that in the year 2013, when this car was sold, that was not black, but it was subsequently changed to black colour, on perusal of statement of Shailesh, it reveals that on his selling said car to Valenton Gonsalves in 2012, said car was of golden colour. In that view of the matter, even statement of Shailesh do not establish the case of prosecution as according to the description of car

given in FIR it is of gray colour Hyundai Accent, while the car which is seized is black colour Honda Citi car and from the statement of its original owner, before it was sold to Valenton Gonsalves in the year 2012, it was of golden colour. In that view of the matter, panchnama of CCTV footage referring to gray colour Accent car is of no consequences.

The learned Additional Public Prosecutor though has relied upon statement of complainant Kailash and Joseph, who was accompanying complainant on the date of incident for jogging and stated that as per these witnesses, they have identified both the accused in the Test Identification Parade, to be the same to whom they had seen on the spot on 29/11/2013, this piece of evidence appears to be too short to connect applicant with the Crime in view of the fact that test of identification was laid on 26/08/2015 i.e. more than one and half years from the incident. Even otherwise considering the contents of report since it is stated that it was dark where vehicle was parked or as the incident alleged to be witnessed by complainant is of early morning at 6.00 a.m. in the month of November, possibility of complainant or his companion Joseph seeing the occupant of the car and identifying them to be the same after more than one and half year, does not inspire confidence.

Similarly, though according to the report, witnesses Nandkumar Patil, Prakash Patil and Nitin Joshi had accompanied complainant to the spot, where they found one body to have set on fire, their statements do not substantiate the case of prosecution any further while no statement of Nitin Joshi is stated to be recorded.

14 On perusal of impugned order passed by the learned Sessions Court, it is found that except for considering that charge-sheet is filed and that nature of offence and the manner of murder committed is serious application appears to have been rejected. In this view of the matter and having considering the involvement of applicant, as aforesaid, application is liable to be allowed by imposing condition as per order below :

- (i) Applicant Deepak Vedpal Tank involved in Crime No.I-413 of 2013 registered by Narpoli Police Station shall be released on bail on his furnishing personal bond in the sum of Rs.50,000/- with one surety in like amount.
- (ii) Applicant, while on bail, shall mark his presence with Narpoli Police Station quarterly, on first day of the month pending trial, and shall not tamper with the witnesses.
- (iii) Applicant shall attend the trial Court on the date of hearing.

(P. N. DESHMUKH J.)