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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.704 OF 2016

Kushaal @ Akash Dattatray Prabhu	 Applicant
V/s.	
The State of Maharashtra	 Respondent

Mr. Aniket Nikam I/by Aashish Satpute, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 14th JUNE, 2016.

P.C. :

1. The applicant/ accused in Crime No.359 of 2015, for the offence punishable under Sections 302, 201, 364A, 384 read with 34 of the Indian Penal Code, registered with Sarkarwada Police Station, Nashik, by this application is praying for bail.
2. The learned counsel for the applicant argued that the applicant is a student of Civil Engineering having no criminal antecedents. He further argued that the evidence against the applicant is too sketch to infer the alleged offence. Learned counsel further argued that in fact identical memorandum under Section 27 of the Evidence Act were recorded and the alleged statement of present applicant/accused has not

resulted in the discovery of any fact. Learned counsel further argued that last seen theory propounded by the prosecution is not clinching and it cannot be said that thus, the applicant and juvenile in conflict with law, had committed murder of Mohitesh. Hence the applicant is entitled for bail.

3. As against this according to learned APP, the alleged offence is serious and there is enough evidence against the applicant showing his complicity in the offence punishable with life imprisonment or death penalty.

4. Perused the chargesheet. On 15.10.2015, Pralin Baviskar, the father of Mohitesh (since deceased) lodged F.I.R. stating that his son Mohitesh is abducted from Nashik and demand of Rs.20 lacs was made to him for releasing Mohitesh. Immediately on the next day on 16.10.2015, the dead body of Mohitesh was found near field of Sakhubai Thamke. The applicant came to be arrested on 18.10.2015.

5. The case of the prosecution is based on last seen theory with corroborating evidence. The applicant, his associate juvenile in conflict with law as well as deceased Mohitesh were the students taking education in Nashik city. The statement of Hujefa Kalim Kazi student taking education at Nashik goes to show that he is acquainted with the applicant, his associate as well as deceased Mohitesh. His statement

reveals that on 14.10.2015, at about 10.15 p.m, he called the present applicant. Thereafter Hujefa, had seen the present applicant as well as juvenile in conflict with law (Saurabh Choudhary), in the company of deceased Mohitesh. The statement of another student Deepak shows that at about 9.15 p.m. on 14.10.2015, Mohitesh has met him as well as his friend and informed that he is going for dinner with Saurabh (juvenile in conflict with law). Similar is the statement of Aditya More. Statement of Nitish Shinde also indicates presence of the deceased in the company of applicant and Saurabh on 14.10.2015. On 16.10.2015, the dead body of Mohitesh was found and the postmortem report shows that his death was homicidal.

6. On 19.10.2015, statement of Saurabh was recorded under Section 27 of the Evidence Act which resulted in the recovery of his blood stained clothes as well as mobile of the deceased. Similar statement of the present applicant was recorded, but nothing was recovered and this second memorandum panchnama shows that the present applicant had disclosed that he had thrown his blood stained clothes in the river bed. May be as his clothes were stated to have been thrown in the river bed, nothing was found. The aspect regarding regarding admissibility of second memorandum panchnama can be decided at the time of trial. On 22.10.2015, search of the room of present applicant i.e. flat No.12 was

conducted and seizure panchnama was recorded. It is seen from the place of residence of present applicant, identify card, wallet, gold chain as well as ICICI bank card of the deceased were recovered and those articles were identified by the informant father.

7. In this view of the matter it cannot be said that there is no prima facie evidence against the applicant in the alleged crime. The offences alleged against the applicant are serious in nature warranting death sentence. As such no case for grant of bail is made out and therefore, order.

Order

Application is rejected.

[A. M. BADAR, J.]