

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.1017 OF 2016

Sohail Babu Khan ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

Jaymala Ostwal with Mr.Krishna Parvatkar i/b. M/s.J.J.Associates,
Advocate for the Applicant.
Mr.H.J.Dedhia, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 15th JULY 2016.

P.C.

1 Applicant having been involved in Crime No.364 of
2015 registered by Bangurnagar Police Station, Mumbai for the
offence punishable under Sections 307, 365, 342 read with
Section 34 of the Indian Penal Code on 06/01/2015, has sought
regular bail.

2 Heard learned counsel for both the sides. The learned
counsel for the applicant has submitted that investigation is
complete, charge-sheet is filed and there is absolutely no evidence
establishing involvement of applicant in the present crime and has
thus contended that the applicant being a family man running his

business in real estate having permanent residence in Mumbai be released on bail by imposing necessary conditions. By referring to the statements of witnesses, coupled with the medical evidence, it is further contended that no provision of Section 307 of the Indian Penal Code can said to be attracted and has thus submitted that applicant be released on bail.

3 The learned Additional Public Prosecutor on behalf of the respondent has opposed the applicant contending that there is nothing to disbelieve the statement of complainant Sanjay Taneja, which finds duly corroborated by statements of other witnesses and medical evidence, which clearly establishes involvement of applicant. It is thus prayed for application be rejected.

4 Perused the copy of report filed with the application and charge-sheet made available by the learned Additional Public Prosecutor. From the report, it reveals that complainant is resident of Mumbai in Flat No.504, Panchwati Co-operative Housing Society and in addition to this flat also owned Flat No.610 in Jay Ambe SRA Society, Oshiwara and came in contact with applicant, who is residing as neighbour in Flat No.612 and who is working as Estate Agent and with his assistance, complainant has initially gave his flat No.610 on rent to some persons two years prior to incident, which flat on the day of incident, which was lying vacant.

5 According to the complainant after flat was vacated by its last tenant, on his instructions, tenant has provided keys of said flat to applicant to whom complainant had instructed to search for client, who would be interested in purchasing the same, which fact was agreed by the applicant and in that context three to four days prior to incident, which took place on 05/11/2015 had contacted complainant along with original documents of said flat. However, during this meeting complainant did not contact applicant with original documents.

 In the meeting, on 04/11/2015 complainant met applicant and disclosed sale price of Flat No.610 to the extent of 26,50,000/-, however, as the price quoted by the complainant was not accepted by the prospective buyer, who was present with applicant, no deal could be finalized on that day.

6 On the following day on 05/11/2015 applicant informed complainant to meet him at 7.00 to 7.30 p.m. along with original documents of said flat and informed that applicant himself would pick up complainant near from his residence at Link Road. Accordingly, complainant waited for applicant outside his Society, where applicant arrived at around 8.00 p.m. in Wagon R Car which was being driven by his driver and applicant was occupying its rear seat. Complainant occupied seat next to the applicant. Within some time, to his surprise, complainant noted that the car

taken towards Link road Hyper City side, and further towards dumping road. Complainant, therefore, suspecting applicant, inquired him where were they going to meet the prospective purchaser of the flat. At that time, applicant strangled complainant by clutch cable commonly used for two wheeler or in its break system. Complainant attempted to save himself. In spite of that applicant forcibly strangled him with the help of said cable. During the course of same transaction, applicant at one point alighted from this vehicle from its right side rear door, taking advantage of this situation complainant jumped out of the car and fell on the road having wire entangled around his neck. Persons present on the spot arrived near him, and at that moment, applicant ran away from the spot.

7 Above contents of report are fully corroborated with the statements of one Smt.Sadhana Sharma and Santosh Singh, who had arrived at the spot at about 8.50 p.m. on being informed by the complainant on phone about the incident and had accordingly reached the spot and found complainant present there in injured condition on the road.

8 Above statements as well as contents of report are further found corroborated with the medical evidence as from the medical certificate it is noted that on 06/11/2015 when complainant was examined in Government Hospital, he is certified

to have sustained injuries in the form of marks all around over his neck, face, lips and on mouth, which are stated to be possible by blunt object.

9 The learned counsel for the applicant has though referred to statement of one Mushirahmed Amjadali Choudhari, from his statement nothing could be gathered, which could be used in favour of the applicant to establish his innocence and his statement refers to the incident dated 04/11/2015 and he is the person with whom no deal of complainant's flat could be finalized as he quoted purchase price to the extent of Rs.25,00,000/- as against the price quoted by complainant as Rs.26,50,000/-.

10 The learned counsel for the applicant has also made an attempt to establish his innocence or false implication by complainant saying that prior to incident complainant had borrowed certain amount from applicant, however did not repay the same and for this reason has falsely implicated applicant by lodging FIR. However, for want of material to substantiate this case applicant, said defence cannot be relied upon. On the contrary, as there is *prima facie* evidence against the applicant, application is liable to be rejected. Hence, following order:

11 Application is rejected.

12 However, learned Sessions Court seized with Sessions trial arising out of Crime No.364 of 2015 registered by Bangurnagar Police Station, shall make an endeavour to decide the case within a period of six months from the date of framing of charge.

13 In the event, case as referred above, could not be disposed of within stipulated period, applicant shall be at liberty to move for grant of bail afresh.

(P. N. DESHMUKH J.)