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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL BAIL APPLICATION NO.1300 OF 2016**

|                          |                 |
|--------------------------|-----------------|
| Sachin Sudhir Pawar      | .... Applicant  |
| V/s.                     |                 |
| The State of Maharashtra | .... Respondent |

Mr. Prashant M. Patil, for the Applicant.  
Mr. Deepak Thakery, APP for the Respondent State.  
Ms. Pranjali N. Sonawane, Dy. S.P. District, Raigad.

**CORAM : A. M. BADAR, J.**

**DATE : 25th JULY, 2016.**

**P.C. :**

1. The applicant/accused, in crime No.43 of 2016, for the offence punishable under Section 302, 201 read with 34 of the Indian Penal Code and under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, by this application is seeking his release on bail.
2. Heard the learned counsel for the applicant/accused. In his submission, F.I.R. itself goes to show that door of the room where the deceased was found hanging by the ligature was broke open. The learned counsel argued that during the investigation, the Investigator has seized

CCTV footage which shows that afterwards Marniya Doye was taken out from the room by ambulance. She was taken to the hospital where she died. According to the learned counsel for the applicant, the applicant himself had taken the deceased to the hospital by ambulance. The learned counsel, therefore, argued that offence punishable under Section 302 is not attracted to the case in hand.

3. The learned APP opposed the application by arguing that crime in question is serious and the applicant is not entitled for bail. The learned APP argued that the applicant had sexually exploited Marniya Doye, after employing her in his office and ultimately Marniya remained pregnant. The learned APP submitted that the investigation is now almost over and probably the Investigating Officer is not filing chargesheet for the offence punishable under Section 302 of IPC. In the submission of the learned APP, prima facie offences, are punishable under Section 306 as well as well as u/s 376 of the Indian Penal Code.

4. Perused the papers of investigation. It is seen that initially accidental death case came to be registered and during enquiry of that case on the basis of report lodged by Shankar Prasad, crime in question came to be registered. According to prosecution case, the deceased Marniya Doye was working as wetress in Hotel Visava at Mahad. Subsequently love relations developed between the present applicant as

well as deceased Marniya Done. Thereafter, deceased Marniya Doye joined employment with the present applicant, who is owner of Sai Siddhi Developers. According to prosecution case love relations between applicant and deceased Marniya culminated in physical intimacy between them and they visited several hotels and lodges including Anandi Lodge, Vakratund Lodge, Shalom Lodge, Chiplun, Highway Trait etc.

5. During investigation, statement of Sarang came to be recorded. This statement goes to show that on 26.4.2016, this witness saw Marniy Doye hanging by ligature, on the front portion of the frame of the door. Inside of the room was visible because of the glass panel to the door. Statement of Sarang shows that thereafter present applicant broke open the door and entered inside to be followed by this witness Sarang. Thereafter present applicant lifted Marniya Doye and Odhani which was used as ligature was cut. Marniya Doye was taken by the ambulance to the hospital, by the present applicant. Statements of Sarang and Kambekar, who visited the spot subsequently go to show that plywood of the door was broken. Prima facie it is seen that after breaking open the door, present applicant caused his entry in the room where the deceased was found hanging by her Odhani. The spot panchnama also reflects same position. With this evidence, according to learned counsel for applicant, penal provisions under Section 302 cannot be attracted in

this case.

6. During investigation, CCTV footage of Ganesh Enterprises has been seized. It appears that the office of Sai Siddhi Engineer is visible from the CCTV installed by Ganesh Enterprises. CCTV footage also shows that initially Marniay Doye entered in the office and after about two hours, the present applicant came to the office. Within a short span of time, thereafter ambulance came and left the spot. The postmortem report shows that Marniya Doye died due to asphyxia due to hanging associated with the evidence of pregnancy. Column No.17 of the postmortem report does not reflect any external injuries on the body of the deceased except ligature mark. The said ligature i.e. Odhani came to be seized from the spot of incident in two pieces.

7. The record of investigation is prima facie pointing out commission of suicide by deceased Marniya Doye. At least there is no prima facie evidence suggesting homicidal death of Marniya Doye. Similarly there is no prima facie evidence to connect the applicant with the offence punishable under Section 302 of the IPC. The Call Detail Record shows that the deceased was constantly in contact with the present applicant. Soon before and after her death there were 12 calls and five messages of the deceased to the present applicant. Cell phone of the deceased could not be traced out.

8. So far as the offence under Section 306 of IPC is concerned, the evidence available is that of statement of informant Shankar Prasad to the effect that the applicant sexually exploited the deceased and did not pay her salary nor gave her better employment as per promised.

9. For making out offence under Section 306 of IPC, it is required to be shown that accused had instigated, provoked or encouraged the victim to commit suicide. Some active suggestions or stimulation by the accused to the deceased in connection of suicide are required to be shown. Section 107 of IPC requires mens rea and without knowledge and intention, there cannot be abetment.

10. So far as offence punishable under Section 376 of IPC is concerned, it appears that the applicant and the deceased were visiting several lodges together and they were having physical relations. The deceased was found to be pregnant. Whether such sexual relations were against her will and without consent of the deceased will have to be looked into at the time of trial.

11. Considering the evidence available on record and as investigation is virtually over and offence alleged is under Section 306 and 376 of IPC, further pre-trial detention of the applicant is not warranted. Therefore, the following order.

Order

- I) The application is allowed.
- II) The applicant arrested in connection with above offence, be released on bail on his executing P.R. Bond in the sum of Rs.30,000/- and on his furnishing surety in the like amount.
- III) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.
- IV) The applicant shall attend the trial scrupulously and shall co-operate the trial Court in expeditious disposal of the case.
- V) The applicant shall not tamper with the prosecution evidence in any manner.

**[A. M. BADAR, J.]**