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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1307 OF 2016

Pankaj Sunil Surve

..Applicant.

Vs.

The State of Maharashtra

..Respondent

Mr. S.R. Borulkar i/b S.V. Chaugule for Applicant.

Ms. S.S. Kaushik APP for State.

Mr. Dombale, P.S.I. Virar Police Station, present.

CORAM: A.S. GADKARI, J.

DATE : 20th October 2016.

P.C.

1 This is an application under Section 439 of Cr. P.C. for bail in CR No.I-811 of 2015 dated 7.12.2015 registered with the Virar Police Station, District-Palghar under Section 302, 120(B), 498(A) of the Indian Penal Code.

2 Heard the learned counsel for the applicant, the learned APP and also perused the chargesheet annexed to the application.

3 The first information report is lodged by Shri Damodar Y. Daripkar. The name of the accused is Smt. Pragati Pankaj Surve. The

approximate date and time of incident is 7.12.2015 about 5.30 a.m.

It is stated in the first information report that the applicant is the husband of the deceased Smt. Pragati. The marriage between the applicant and the deceased Smt. Pragati was performed in the year 2004 and out of the said wedlock, there are two children aged about 10 years and 8 years respectively. That the applicant was addicted to liquor, was not doing any work for his livelihood and used to harass deceased Smt. Pragati for bringing money from her parents. There were disputes between the deceased and the applicant. That on 7.12.2015 at about 9.30 a.m. the mother of the applicant Smt. Kalpana gave a phone call to the informant informing him that that the Smt. Pragati has consumed poison. After the said information, the informant immediately rushed to the house of the applicant. It was informed to him that the dead body of the deceased Smt. Pragati was taken to the Rural Hospital, Virar. He noticed strangulation marks on the neck of the deceased Smt. Pragati. He discussed the said issue with the Doctors in the said hospital who informed him that the death of the deceased Smt. Pragati was caused due to pressing of neck. In the premise the first information report is lodged.

During the course of investigation, the police arrested the applicant on 18.12.2015. That the police received postmortem notes of

deceased Smt. Pragati. The column No.17 of the postmortem report mentions as under:

“Contusion over ant. part of neck. 3 x 1 x .05 cm.. Marks were slightly pale. Above this mark..... congestion + puffiness. Thyroid cartilage fractured”.

After completion of investigation, the police have submitted chargesheet.

4 The learned counsel for the applicant submitted that though the informant has stated that on 7.12.2015 when he observed the dead body of the deceased, he noticed compression marks on the neck, however, the postmortem report contradicts the said aspect. He submitted that during the course of autopsy, it is categorically mentioned by the concerned Doctor that the marks were on the anterior part of the neck with rupture of thyroid. He submitted that if somebody strangulates the person from back side the ligature marks would appear on the posterior side and not on anterior side. In support of his contention he relied upon a decision of the Division Bench of this Court in the case of Nitin D. Kothawade Vs. State of Maharashtra dated 16th April 2016 in Criminal Appeal No.229 of 1997. He submitted that the prosecution has not brought on record any material which would support its case and there is ambiguity about exact mode of

death. He submitted that the neighbours have seen the applicant lastly at 11.30 p.m. on 6.12.2015 and the witnesses noticed the door of the applicant opened on the next day morning on 7.12.2015 at about 8.30 a.m. That the body of the deceased was noticed by the neighbours at 8.30 a.m.. That the evidence on record reveals that approximate time of death of the deceased Smt. Pragati is 5.30 a.m. on 7.12.2015. He submitted that, neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused. In support of his contention, he relied upon the decision of the Supreme Court in the case of Sawal Das Vs. State of Bihar reported in (1974) 4 SCC 193. He submitted that the prosecution has failed to discharge the primary burden of establishing the fact of exact reason of cause of death and therefore the applicant at this stage may be granted the benefit of the same and may be released on bail.

5 Per contra, the learned APP vehemently opposed the application. However, the learned APP conceded to the fact that the

evidence on record makes it difficult to substantiate and reconcile the statement of the informant namely Shri Damodar Daripkar and the postmortem notes in particular Column No.17. The Medical Officer has categorically mentioned the opinion about probable death of the deceased as “death due to strangulation”. She submitted that the cause of death has been established by the prosecution and the applicant is the culprit of the crime. She therefore prayed that the application may be rejected.

6 I have perused the entire chargesheet and prima facie it appears that there is substance in the argument advanced by the learned counsel for the applicant. Prima facie it further appears that the prosecution has not brought on record any cogent material which would corroborate the medical finding recorded by the Medical officer in Col. No.17 of the postmortem notes and there is ambiguity about the exact mode by which the death of deceased Smt. Pragati. That if the deceased was subjected to strangulation, then there are no signs of resistance by her. Prima facie it appears that the prosecution has not explained the said aspect. That the prosecution has also not produced on record the statements of the children which would have made the case more clear. In view of the peculiar facts of the present case the applicant has made out a case for his release on bail.

7 Hence, the following order:

(i) The applicant be released on bail in CR No.I-811 of 2015 registered with Virar Police Station on his furnishing PR bond of Rs.50,000/- with one or more local sureties in the like amount.

(ii) After his release from jail, the applicant shall attend the Virar Station on every first Monday of the month between 11.00 a.m. to 2.00 p.m. till conclusion of trial.

(iii) The applicant shall also attend all the dates before the Trial Court.

(iv) Any two consecutive defaults in complying with the aforesaid conditions, will attract the provisions of cancellation of bail.

8 The application is allowed in the aforesaid terms.

9 The observations made in the present Order are prima facie in nature and made in context while deciding the present application of bail and the Trial Court should not get influenced by the same at the time of conducting the trial.

(A.S. GADKARI,J.)