

Nagar, Andheri (East) along with her daughter. The complainant subsequently changed her job from Borivali to Malad. The applicant subsequently took the address of the complainant and started visiting her residence situated at Malad. On 11/03/2015, the complainant was busy in her work place at S.K.Bar, Malad and could not take mobile phone call given by the applicant as the said mobile phone was kept in the locker of the establishment. As the complainant did not take phone call of the applicant, the applicant got suspicious and carried a misunderstanding that the complainant has gone with some customer for roaming. The complainant thereafter came to her house at about 6.00 a.m. The moment the complainant entered into the house, the applicant started beating her. The complainant enquired about her daughter. The applicant told her that “he has killed Tiya”. When the complainant was in the process of taking the said daughter to hospital, the police reached the spot and took the applicant in custody. The doctor declared Ms.Tiya dead before admission to the hospital. After lodging of the first information report, the police conducted investigation into the matter and submitted the charge-sheet.

2. The learned Counsel for the applicant submitted that there is no evidence to show that the applicant was present in the house of the complainant on that particular day and time. He also submitted that the statement of the maid servant – Smt. Khwajabin

Nooruddin Shaikh has been recorded belatedly after a gap of about 4 days. He submitted that the said maid servant was not knowing the applicant and therefore, the police had submitted an application before the Magistrate for taking test identification parade of the applicant. However, till date, the test identification parade has not been conducted. He further submitted that the statement of the complainant cannot be believed. That there is no other evidence on record to show that the applicant was in fact present at the said place. He, therefore, submitted that the applicant may therefore be released on bail.

3. Heard the learned Counsel for the applicant and the learned APP. I have also perused the copy of the charge-sheet annexed to the present application.

4. I have perused the statement of the complainant and also statement of the maid servant namely Smt. Khwajabin Nooruddin Shaikh. In the statement of the complainant, she has categorically stated that on being questioned to the applicant about the health condition of her daughter namely Tiya, he informed her that "he has killed her". This is the extra judicial confession given by the applicant to the said witness. Apart from the said fact, the statement of the maid servant clearly points out the fact that upto 6.00 a.m. on 12/03/2015, the applicant was in the said room along with Tiya. That when at about 4.00 a.m., the applicant came back

from outside, the said Tiya was breathing uncomfortably and had slept on his shoulder. The said fact came to the notice of the maid servant between 4.30 a.m. to 5.00 a.m. That upto 6.00 a.m., the applicant was at the said house and when the complainant came to the house at about 6.00 a.m., the applicant assaulted her and tried to escape from the spot when the police apprehended him immediately.

5. The statement of the said witness shows that the applicant was very much present at the said place upto 6.00 a.m.. He was with his daughter Tiya at that time. Therefore, in view of the Section 106 of the Evidence Act, the applicant has exclusive knowledge about the injuries caused to the said deceased Tiya leading her death. Cause of Death Certificate issued by the Medical Officer, Cooper hospital mentions the cause of death as “asphyxia due to throttling”. As stated above, it is the applicant who has to give explanation about his exclusive knowledge about the condition of the said Tiya as he was with her in the said room. Thus, after taking into consideration the statement of the complainant and the statement of the maid servant, the complicity of the applicant in the present crime is *prima facie* established. It appears to me that the applicant is the only perpetrator of the said crime and therefore, no case is made out to release him on bail.

6. The Application is accordingly dismissed.

(A.S.GADKARI, J.)