

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

CRIMINAL BAIL APPLICATION NO.1451 OF 2015

Maji Kesa Bappa @ Ramesh Patel	...Applicant
vs.	
The State of Maharashtra (At the instance of Malwani Police Station, Mumbai)	...Respondent

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Mr. Shirish Gupte, Senior Advocate a/w Mr. Rajendra Rathod, Mr.
A. R. Bubra i/b. Mr. O. A. Siddiqui for the applicant.
Mrs. P. P. Shinde, APP for the State.

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CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 16th APRIL, 2016.

P.C. :

1. This application is moved for bail as the applicant/accused is facing charges under section 303 of the Indian Penal Code registered with Malwani Police Station, Mumbai. The offence is registered at the instance of Smt. Sunitadevi Kamlesh Prajapati on 23/9/2014.

2. The incident of murder has taken place in the night of 21/9/2014 and 22/9/2014. Thereafter offence was registered on 23/9/2014. The deceased Anu Sharma and the applicant/accused were staying together at Rajubhai Building, Sai Rahiwashi Sangh Society, Pascalwadi, Madh Jetti, Madh, Malwani-61. The applicant/accused used to stay there for few days in a week, otherwise he used to stay with his wife and they had three children. It is the case of the prosecution that the applicant/accused and the

deceased had quarrel on the evening on 21/9/2014. Her neighbour Sunita Prajapati went to the house of the deceased as the deceased had requested her to make chapatis and some curry for her and the applicant/accused. When she went at around 9.00 p.m. on 21/9/2014, the applicant/accused was present. On the next day the deceased did not come out of the house and therefore in the evening at around 6.30 p.m. she entered the house. Door was not locked. When she entered, she found the deceased was sleeping on the bed. She called her. However she did not respond, so she informed her husband. Her husband phoned the applicant/accused and asked him to come home. The applicant/accused along with his neighbour came home and they found that the deceased was dead. On her neck and face, some injuries were found. However, she was declared dead. Thereafter some neighbour phoned police. The police arrived and thereafter doctor declared her dead. Police registered offence against the applicant/accused. He was taken in custody on 23/9/2014. Hence this bail application.

3. Learned Senior counsel for the applicant/accused submitted that the applicant/accused is innocent. He has not committed any offence. The evidence against the applicant/accused is only circumstantial and not sufficient to establish any link against the applicant/accused. He submitted that one of the two neighbouring ladies have stated that she had seen the applicant/accused while going to the house of the deceased on 22/9/2014 at around 7.30 p.m. to 8.30 p.m. He submitted that there is confusion in respect of the dates whether the offence has

taken place on 21/9/2015 or 22/9/2014. He submitted that the case of the prosecution is based on the theory of last seen together. The two neighbouring ladies have stated that they have seen the applicant/accused on the night in the house of the deceased and thereafter the deceased was found dead on the next evening. He further pointed out that there is recovery of clothes of the applicant/accused under panchanama on 28/9/2014. He submitted that on the earlier date i.e. 23/9/2014, police have locked the said premises where the deceased was found dead and from where the applicant/accused took out his clothes. He further submitted that at the time of spot panchanama, police have inspected the room where the fridge was kept. In such circumstances this cannot be strictly treated as discovery of the articles. In support of his submissions, he relied on a judgment of *Vijendra vs. State of Delhi, (1997) 6 Supreme Court Cases 171* and so also another judgment of *Surendrasingh B. Saud and others vs. The State of Maharashtra, (1985) 2 Bom CR 518*. He further submitted that the blood stains found on the jeans of the applicant/accused and the DNA report discloses that the blood matches with the blood of the deceased cannot be given much importance because the applicant/accused and the deceased were staying together and sexually involved. He further submitted that there are statements of few Doctors which discloses that the applicant/accused suppressed the fact of unnatural death of the deceased. However, it is done out of fear and not because he has committed any offence, much less offence of murder.

4. Learned Public Prosecutor opposes the application and relied on the DNA report of the blood stains found on the clothes of the accused and so also DNA of nail clipping of the deceased. Learned Public Prosecutor submitted that there is circumstantial evidence against the applicant/accused. She relied on the statements of Durga Gimre and the complainant Mrs. Sunita Prajapati. She also pointed out the statements of two doctors recorded in the case wherein they have stated that the applicant/accused on the night of 22/9/2014 approached them and requested to issue death certificate and made false statements about her death. She also relied on the statement of Mrs. Tulsi Mahavir Shah.

5. Learned counsel for the applicant/accused submits that the clothes were found below the fridge and the police have already taken search of that room and they have locked the said room. In the case of *Vijendra vs. State of Delhi, (supra)* body of the deceased was recovered on 27/6/1992 and in consequence of information received from the three appellants on 30/6/1992 they discovered the place where the dead body of the deceased was thrown. In the case of *Surendrasingh B. Saud and others vs. The State of Maharashtra, (supra)* the accused volunteered to discover wooden dhota or block from behind the bungalow and clothes were recovered from a bucket in the bathroom inside the bungalow. The Supreme Court in both the cases has disbelieved the evidence under Section 27 of the Evidence Act. While appreciating the evidence especially of the discovery of fact, each case needs to

be taken into account. In the present case, though the room was locked by the police after conducting spot panchanama and at that time though fridge was there in the said room, they did not find polythene bag below the fridge. However, pursuant to information given by the applicant/accused when they opened the room, he took out polythene bag with clothes which was kept below the fridge. It is to be noted that polythene bag was hidden below the fridge. Thus it was not visible if a general search is taken of the room. Therefore though spot panchanama was conducted, at the relevant time the police did not look below the fridge. Therefore, in the present case, it cannot be said that the place where the polythene bag with the clothes was kept was “fact” within the knowledge of the police and thus the panchanama at this prima facie stage cannot be disbelieved. In support of this, I rely on the case of *Dhan Raj @ Dhand vs. State of Haryana, (2014) 6 Supreme Court Cases 745* and so also on the case of *Rumi Bora Dutta vs. State of Assam, (2013) 7 Supreme Court Cases 417*.

6. However, the submission of the learned counsel that no value should be given to the DNA report disclosing that the clothes, found in the polythene bag, were stained with blood of the deceased, is prima facie correct. It is rightly argued that the applicant/accused and the deceased were staying together and they had sexual relationship and in such circumstances there may be transfer of blood of a woman on the clothes of the accused.

7. Apart from the evidence discussed above there is other material evidence. Perused all the statements, FIR and PM report.

PM report discloses that the death is due to asphyxia due to smothering & strangulation. This shows that the death was homicidal death. There were simple injuries on the body of the deceased. There were linear contusion and crecentric abrasions. This shows that at the time of death, deceased was strangled by the assailant. The arrest panchanama dated 25/9/2014 discloses that there were marks of abrasion on the person of the accused when he was arrested on 25/9/2014. Statement of Kamlesh Prajapati shows that the applicant/accused took him to the Doctor and at that time he suppressed the fact of unnatural death of the deceased and made a false statement. The submission of the learned Senior Counsel for the applicant/accused that he might have lied due to fear cannot be appreciated at this stage because prima facie there are other circumstances available against the applicant/accused. DNA of particles in the nail clipping of the deceased matches with the blood of the applicant/accused. Thus, from the circumstances of last seen together, conduct, injury marks and the DNA Report, which are prima facie, are major circumstances, I am of the view that it is not the case where bail can be granted.

8. In the circumstances, I am not inclined to grant bail. The application is rejected. Sessions Court is directed to expedite the trial and to dispose of the Sessions Case preferably on or before 31/12/2016.

(MRS.MRIDULA BHATKAR, J.)