

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

BAIL APPLICATION NO.1529 OF 2016

Karan Kishor Devras ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**
.....

Ms.Tripty R. Shetty, Advocate for the Applicant.
Mr.H.J.Dedhia, APP for the Respondent/State.

CORAM : P. N. DESHMUKH J.

DATED : 10th AUGUST 2016.

P.C.

1 Applicant involved in Crime No.242 of 2014 registered by
Dongari Police Station, Mumbai on 21/12/2014 for the offence
punishable under Sections 302, 201, 342, 120(B) and 170 of the Indian
Penal Code has applied for bail.

2 Heard learned counsel for both the sides.

3 According to the learned counsel for applicant, there is absolutely nothing on record to establish involvement of applicant in this Crime, and two co-accused are already granted bail. It is submitted that case of applicant is on the better footing, than that of co-accused Michael Mozes, Francis D'souza and Sunil Choudhary, as eye-witness Milind Padwal had named above co-accused in his statement dated 27/01/2015, however, no name of applicant is mentioned therein. It is,

therefore, prayed that apart from having no evidence against applicant, he is also entitled for bail on the ground of parity.

4 Learned Additional Public Prosecutor opposed the application contending that on the strength of Memorandum statement of applicant recorded under Section 27 of the Indian Evidence Act, Investigating Officer had visited the shop, wherefrom present applicant has purchased nylon rope, and has submitted that above evidence is corroborated by the statement of shop owner. Learned Additional Public Prosecutor, however, had admitted, that in the statement of sole eye-witness Milind, applicant's name is not mentioned.

5 Perused the charge-sheet. From it reveals that Vishal Achrekar brother of deceased on 23/08/2014 had lodged missing report with Dongari Police Station, since his brother was not found for last three days. During the course of inquiry, it revealed that deceased was having contacts with one Jotsna More, and from the Call Data Records of the cell number of Jotsna, it further revealed that on 19/08/2014, they were in Dongari area. Thus, on interrogation from co-accused Jotsna, she admitted her relations with deceased and on interrogation with reference to one cell number oftenly used by her, same was found to be of co-accused Prakash Patil. Accordingly, on apprehension of Prakash Patil, he came to be interrogated, who disclosed that he was having physical relations with Jotsna with whom Vaibhav was also maintaining such relations and was bothering her to continue with the same. Jotsna being fed up, on this count, had requested Prakash to take some steps to get rid of from deceased. It

further reveals that in the background of above facts, on 20/08/2014 since called by Jotsna, deceased reached near one Club House at Naigaon at 10.30 a.m. Jotsna had provided physical description of deceased to co-accused Prakash Patil and Michael Mozes, who contacted him on the basis of description given by Jotsna, and on introducing themselves as police officials took him to the office of co-accused Michael Mozes. It further appears to be the case of prosecution that at the office deceased was subjected to assault and at about 10.00 p.m., he was strangled to death, and thereafter his body was carried in a vehicle, owned by co-accused Michael, to a place on Bombay-Ahmedabad Highway, and was thrown down from one of the bridge into the flowing water.

6 Report, as aforesaid, is lodged by Mhaske, PSI. It is material to note that name of applicant is not mentioned therein.

7 With reference to case of applicant on the ground of parity, as put forth from the record it reveals that Bail Applications of co-accused Michael Mozes, and of Francis D'souza are allowed by this Court, though their names are mentioned by sole eye-witness, Milind Padwal in his statement, as said statement is doubted having been recorded belatedly on 27/01/2015. So far as, present applicant is concerned, his name is not even stated by said eye-witness. In that view of the matter, case of applicant appears to be on better footing than above named co-accused, who are already released on bail by this Court.

8 While considering case of prosecution with reference to involvement of applicant on the strength of his memorandum statement recorded under Section 27 of the Indian Evidence Act, on a specific query to learned Additional Public Prosecutor, on instructions, he states that in the light of said statement no recovery is effected, as on the strength of said statement, Investigating Officer had visited the spot of incident and the shop wherefrom applicant is alleged to have purchased the nylon rope. In view of above facts, as nothing is recovered at the instance of applicant, this statement of accused do not substantiate the case of prosecution in any manner. Moreover, on considering the statement of shopkeeper Vajaram Guraram Choudhari dated 31/12/2014, he has stated that he knows applicant as he was visiting his shop much prior to incident for purchasing articles of daily needs, and further stated that two months prior to his recording statement, applicant has purchased blue colour nylon rope. Admittedly, no seizure of any nylon rope has been effected during the course of investigation. In that view of the matter, this ground, put forth by prosecution, is not sufficient to establish involvement of applicant in the present Crime.

9 Having considering the facts, as aforesaid, and as charge-sheet is already filed, and considering the nature of allegation levelled against the applicant, application is liable to be allowed as per order below:

- (i) Applicant shall be released on bail on executing his personal bond in the sum of Rs.50,000/- with one or two sureties to make the like amount.

- (ii) On being released on bail, applicant shall mark his presence with Dongari Police Station on 5th and 25th day of each month between 4.00 to 6.00 p.m.
- (iii) Applicant shall not tamper with the witnesses, and shall attend the trial Court on the fixed dates of hearing.

(P. N. DESHMUKH J.)