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

BAIL APPLICATION NO.1711 OF 2015

Chandrakant Nagshetty Biradar	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO.830 OF 2015
IN
BAIL APPLICATION NO.1711 OF 2015**

Sudhakar S/o. Nivrutti Honrao	...Intervener
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IN THE MATTER BETWEEN

Chandrakant Nagshetty Biradar	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.H.S.Ponda, i/b Mr.Prasanna (Prashant) Patil, for the Applicant.

Mr.J.H.Ramugade, APP for the Respondent-State

Mr.Vaibhav Sukdare a/w Mr.A.U.Patil, for the Intervener.

CORAM : REVATI MOHITE DERE, J.

DATE : 27th APRIL, 2016

P.C. :

1. Heard learned Counsel for the applicant, learned counsel for

the intervener and the learned A.P.P.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 168 of 2014, registered with the Wakad Police Station, Pune, for the alleged offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code.

3. The applicant is the husband of the deceased – Suvarna Chandrakant Biradar. The complainant is the step brother of the deceased. According to the complainant, the applicant got married to the deceased on 16th April, 2014. He has stated that the his step sister – Suvarna had done her M.Sc. and the applicant had done his B.Sc. in agriculture. He has stated that for the marriage, their father had mortgaged his property and taken a loan of Rs.3,00,000/- and had pulled out a sum of Rs.2,50,000/- from his retirement funds. He has stated that he and his step-brother had contributed Rs.50,000/- each towards dowry. According to the complainant, Rs.3,75,000/-, 2 tolas of gold and Rs.50,000/- was given as dowry to the applicant in marriage. He has stated that after marriage, the deceased started residing with the applicant and other members of the

family. Some time in July, 2014 as per customs, he (complainant) invited the deceased to his house at Pune. He has alleged that the deceased had during her stay with him confided in him about the ill-treatment which was being meted out to her by the present applicant. He has alleged that the deceased disclosed to him that she was not allowed to step out of the house ; that she was not permitted to use her mobile, that her husband would not inform her whenever he went out of the house and that the entire responsibility of the house-hold was cast upon her. According to the complainant, he told her that with passage of time, the situation would improve. In November, 2014, during Diwali, the applicant fought with the deceased, on the ground that when he (applicant) and his family members had been to the complainant's house, they were not treated properly. The complainant has alleged that the deceased disclosed to him, that the applicant was demanding gold ornaments and clothes for himself and his family members. On 23rd November, 2014, the complainant invited his sister (deceased) and her in-laws to his residence at Pune and gave a gold ring weighing 5 gms to the applicant and clothes to the entire family. According to the complainant, the applicant was not permitting the deceased to work. On 21st December, 2014 at about 8.30 a.m. the applicant

called the complainant on his mobile phone and disclosed to him, that Suvarna (deceased) was found lying unconscious on the podium in the garden area of the building, where they were residing and that she was admitted to the Aditya Birla Hospital. Pursuant to the said information, the complainant and family members rushed to the Aditya Birla Hospital and learnt that the deceased was no more. According to the complainant, after seeing the dead body of the deceased, they noticed certain injuries on her body i.e. blue and black marks on the toes, wrists and palms and that the deceased's back was completely bruised. They also noticed that blood was oozing from the nose and ears. The dead body was sent for postmortem and the cause of death was stated to be multiple injuries. On hearing of the death of the deceased, close friends of the deceased, Pranjali Patel, Manoj Muskawad rushed to the Hospital and informed the complainant about how the deceased had confided in them, about the ill-treatment meted out to her by the applicant. According to the complainant, the applicant had assaulted the deceased and caused grievance injuries to her with the intention of killing her and thereafter had placed the dead body of Suvarna on the podium to show that Suvarna had fallen down from the terrace. Pursuant to the complaint, the aforesaid offences came to be registered as

against the applicant and two others.

4. Learned Counsel for the applicant submitted that although the motive alleged is cruelty and ill-treatment, Section 498A has not been invoked by the police. According to him, although several witnesses i.e. the relatives of the deceased and her friends had disclosed that the applicant was ill-treating her, Section 498A has not been added to the aforesaid C.R. He submitted that neither has the charge of abetment to commit suicide been applied in the said case. He submitted that the deceased was having an affair with one Nilesh Aaher and as Nilesh was trying to pressurize her to leave the applicant, the deceased committed suicide by jumping from the 10th floor of the building. He relied on the CDR records, which show that several calls were exchanged between Nilesh and the deceased, including on the date of the incident. He relied on the statement of Nilesh, which is on page 110 of the application as well as on the statement of the said witness recorded under Section 164 of the Cr.PC. He submitted that from the material on record, it was evident that there was an affair between the deceased and Nilesh and that the deceased had even stayed overnight with Nilesh between 8th November and 9th November, 2014 in Ellora Lodge at

Pune. He submitted that Nilesh was pressurizing her to leave the applicant and hence out of confusion and frustration, the deceased committed suicide. He submitted that on the date of the incident, from 1.00 p.m. to 7.30 p.m. there were as many as 5 calls which were made by Nilesh to the deceased and not by the deceased to Nilesh. He submitted that the 5 calls were at 1.57 p.m., (duration - 855 seconds); 4.51 p.m. (duration - 284 seconds); 5.21 p.m, (duration - 38 seconds); 6.26 p.m. (duration - 3137 seconds) and 7.20 p.m., (duration - 803 seconds). He submitted that the deceased had another mobile bearing No.95520747571 which shows that Nilesh had called on the said number at 1.53 p.m. (duration - 147 seconds) and that the deceased had called Nilesh at 4.47 p.m., (duration - 19 seconds) and again at 5.23 p.m. (duration - 24 seconds). He submitted that during the said period from 1.00 p.m. to 7.30 p.m., for 88 minutes (total), there was conversation between the two and it is impossible that she would have complained about the assault by the applicant on her as alleged by Nilesh. He submitted that on the contrary, Nilesh was forcing her to leave the applicant and being upset with the said fact, the applicant took such a drastic step. He submitted that Meena (mother of the deceased) and Amrut (father of the deceased) in their statements have alleged that the

deceased had spoken to Meena (mother) on the said date, however, the CDR records are to the contrary. It shows that there were no calls made by the deceased to her parents and vice-versa. He submitted that the last call that was exchanged between the deceased and her parents was on 16th December, 2014. He further submitted that no blood was found in the flat. According to him, in all probability the deceased jumped from the 10th floor, leaving behind her chappals, as is evident from the panchanama. He submitted that the injuries which are caused, as reflected in the postmortem report could not be possible by the belt, allegedly used in the commission of the offence but were only possible by a jump from the 10th floor. He further submitted that there are no eye-witnesses who had seen the dead body prior to 6.00 - 6.30 a.m. and that for the first time the dead body was seen at around 7.30. He further relied on an alleged suicide note (not part of the charge-sheet) written by the deceased which exonerates the applicant.

5. Learned APP vehemently opposed the bail application. He submitted that although the prosecution case rests on circumstantial evidence, there is ample material/evidence to show the complicity of the

applicant. He relied on the statement of Nilesh Aaher, which is on page 110 of the application. He submitted that Nilesh had categorically stated in his statement that the applicant had assaulted her and that the last phone call exchanged between him and the deceased was at 7.30 p.m. on 20th December, 2014. He submitted that there is recovery of a blood stained belt and blood stained clothes at the instance of the applicant. He submitted that the statement of some of the witnesses, like Sweta Allwin Kocheta shows that when they reached the spot after being informed that a dead body was lying on the podium, the applicant came there and disclosed that the said lady was his wife. The said witness has stated that when she asked as to why she was lying there, the applicant disclosed that he was sleeping and that he had no knowledge of the same. She has further stated that thereafter the applicant made a few phone calls disclosing that Suvarna had fallen down and asked them to come home; and that although the deceased had fallen down, the applicant showed no grief on his face and there was no anxiety to rush the deceased to the hospital. She has stated that the when the residents of the society asked him to take her to the hospital, he disclosed that the relatives were coming and that thereafter, he would take her to the hospital. He tendered some photographs to show the

nature of the injuries sustained by the deceased and the parts on which the deceased had received injuries. He submitted that the said injuries were not possible by a fall from a height of 22.05 meters. He further submitted that in the postmortem report the injuries shown were 'closed fracture dislocation of right ankle joint, closed fracture dislocation of left ankle joint, closed fracture dislocation of right shoulder joint, closed fracture dislocation of right hip joint, closed fracture of left mandibular ramus'. He submitted that the considering the nature of injuries, the theory of a fall can be ruled out. He also relied on the statement of some of the friends of the deceased who have stated that the applicant ill-treated and assaulted the deceased and that the deceased had disclosed about the same to them. He further submitted that at the spot where the dead body was found, no blood was found lying which is highly improbable, if the deceased had sustained a fall/had jumped from the 10th Floor. He submitted that even the location of the fall was about 9.05 meters from the edge of the building. He submitted that it appears that the applicant had learnt about the calls made by Nilesh to the deceased, as a result of which the aforesaid incident took place. He submitted that as far as suicide note is concerned, the same cannot be relied upon, as the same was not seized from the spot

nor is it a part of the charge-sheet.

6. Learned Counsel for the intervener supports the submissions advanced by the learned APP.

7. Perused the papers. Although the prosecution case rests on circumstantial evidence, prima-facie, there are sufficient circumstances which show the complicity of the applicant in the commission of the offence. The statements of various witnesses including the relatives and friends of the deceased, disclose the manner in which the applicant was ill-treating and assaulting the deceased. The statement of Nilesh with whom the deceased was allegedly having an affair, discloses that he had got in touch with the deceased in November, 2014. Nilesh has stated that on 20th December, 2014, the deceased had informed him, that the applicant had learnt from his niece that she was talking to some person, pursuant to which, the applicant assaulted the deceased at about 7.30 p.m., when the deceased was talking with Nilesh. He had stated that when they were talking, suddenly one person took the phone from Suvarna's (deceased) hand and disclosed to him that he was her husband and started abusing him

and also threatened to kill him and started asking Suvarna (deceased) as to whom she was speaking to. He has stated that thereafter, he heard a quarrel and abuses being hurled and after some time as he could not hear anything, he disconnected the call. He has stated that as the applicant had learnt about the phone call made by him to Suvarna, he did not call back. The postmortem report shows that the deceased had suffered several contusions, abrasions on back, neck, elbow and head etc. The deceased had sustained fracture 'closed fracture dislocation of right ankle joint, closed fracture dislocation of left ankle joint, closed fracture dislocation of right shoulder joint, closed fracture dislocation of right hip joint, closed fracture of left mandibular ramus.' The deceased had not sustained any fracture of the skull. A perusal of the photographs show that the deceased had sustained several injuries on her back, neck etc. These injuries were blue and black in nature. There was no blood found at the spot, where the deceased had allegedly jumped according to the applicant from the 10th floor. There is recovery of a blood stained belt and blood stained clothes at the instance of the applicant. Some of the witnesses who came to the spot after the dead body was seen on the podium and before the arrival of the applicant have stated that the conduct of the applicant on seeing the dead body, was

certainly not a conduct of any normal person i.e. there was no anxiety to take her to the hospital or any grief on his face. As far as suicide note is concerned, which is heavily relied upon by the learned counsel for the applicant is concerned, the said suicide note is not a part of the charge-sheet and has not been seized under any panchanama and hence cannot be considered or looked into.

8. Considering the material on record, this is not a fit case to enlarge the applicant on bail.

9. Accordingly, the Application for bail is rejected and disposed of as such. However, the trial is expedited. The Trial Court shall make an endeavour to conclude the trial, as expeditiously as possible.

10. It is made clear, that the observations made herein, are prima-facie, for the purpose of deciding this application and the learned Judge shall conduct the case on its own merits, uninfluenced by the observations made in this order.

11. In view of the disposal of the Bail Application No.1711 of 2015, the Intervention Application being Criminal Application No.830 of 2015 does not survive and the same is also disposed of.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.