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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1229 OF 2015
IN
CRIMINAL APPEAL NO. 976 OF 2015

Mangesh Arjun Bhosale ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Laxmikant M. Shukla, Advocate for the applicant.
Mrs. U.V. Kejriwal, APP for the respondent/State.

**CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.**

JUNE 17 , 2016.

ORAL ORDER: (Per Mrs. Mridula Bhatkar, J.)

This Bail Application is preferred in Criminal Appeal No. 976 of 2015. The applicant/accused is convicted by the judgment and order dated 12th August, 2015 passed by Ad-hoc Additional Sessions Judge, City Civil and Sessions Court, Mumbai under section 302 of the Indian Penal Code wherein he was sentenced to undergo R.I. for life and to pay fine of Rs.2,000/-, in default to further undergo S.I. for one month; and also under section 506 (Part II) of Indian Penal Code and is sentenced to undergo R.I. for three months.

2. The applicant/accused along with other two accused was charged and convicted for murder of one Kamal Hanumant Mane on the night intervening 29th September, 2013 and 30th September, 2013.

3. The learned counsel Mr. Shukla appearing for the applicant has submitted that there is no sufficient evidence against the applicant/accused to prove guilt under section 302 of Indian Penal Code. He submitted that the evidence of PW-1 Kranti Ashok Desai cannot be believed, as there are some material omissions and contradictions in her evidence. Her statement (FIR) was recorded on 30th September, 2013 and thereafter her two supplementary statements were recorded. She did not know accused prior to the incident and therefore, the evidence of Test Identification Parade is important. The learned counsel argued that the material admissions are sought in the cross-examination of PW-3 Vishnu Janu Kanhekar, who conducted Test Identification Parade. He submitted that PW-1 Kranti did not give specific description of the accused and whatever description she gave does not match the physical status of the accused. He submitted that the applicant/accused is having prominent 3 moles on his face, which is admitted by PW-3, however, he did not select dummies of similar look.

This material flaw is not taken into account by the learned trial Judge. He further submitted that as per the evidence of PW-1, she submitted that she noticed on the date of incident that applicant/accused was pressing the neck of the deceased and daughter of the deceased was pressing mouth of the deceased. He relied on the evidence of PW-11 Dr. Sanjay Wathore wherein he gave admission that there were no marks on the neck of the deceased. The hyoid bone was not fractured and therefore whatever is stated by PW-1 Kranti in respect of act causing death is not consistent with the medical evidence. He further submitted that motive is not proved by the prosecution and hence, the applicant/accused be released on bail.

4. Learned APP opposed the Bail Application.

5. We went through the evidence of PW-1 Kranti, PW-3 Vishnu Kanhekar and PW-11 Sanjay Wathore. After going through the evidence, *prima facie* we do not come across any significant omission or contradiction in the evidence of PW-1. She has stated that she has seen accused pressing the neck of the deceased and daughter of the deceased pressing the mouth of the deceased. The cause of death, as opined by the

medical officer PW-11, is due to asphyxia with smothering. In Test Identification Parade, we are of the view that non-mentioning of moles on the face of applicant/accused by PW-1 while giving description of the accused itself cannot destroy the fact of identification of accused by PW-1. The evidence of eye-witness appears cogent and reliable. In view of this, we reject the Bail Application.

(MRS. MRIDULA BHATKAR,J.) (MRS. V.K. TAHILRAMANI, J.)