

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2120 OF 2015

Budhbhan @ Vardhman Singh.

..Applicant.

Vs.

The State of Maharashtra.

.. Respondent.

Mr. A.P. Munderggi, Senior Advocate with Mr. Indrajeet Kulkarni for the Applicant.

Smt. Rutuja Ambekar, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 23rd February, 2016

P.C.

The applicant is seeking bail in CR No. I-311 of 2013 dated 10.12.2013 registered with Bazarpet Police Station, Kalyan, District Thane under Section-302,201,366, 452,323,504,506(2) read with 34 of the Indian Penal Code.

2) The applicant herein is the brother of the deceased Mrs. Pooja. The first information is lodged by Kunal Anand Srivastav husband of the deceased Mrs. Pooja. It is the prosecution case that deceased Mrs. Pooja married with the complainant against the wish of her father and other family members. It is the further prosecution case that after the marriage Mrs. Pooja was residing at Kalyan at her matrimonial house. That, on 14.10.2013, the applicant, the elder brother of the deceased Pooja, her father namely Ravindrasingh and her mother and some other family members came to Kalyan, entered into the house of the complainant and abducted Mrs. Pooja from Kalyan to Gawlior. The complainant when was on his way to his duty, he received a phone call from his father about the said incident. It appears from the record that the police did not lodge the first information report on the complaint made by

the complainant and therefore, the complainant filed a private complaint in the Court of JMFC at Kalyan being OMA No.392/2013 on 2.12.2013. The learned JMFC passed an order under Section 156(3) of the Cr.P.C. On 10.12.2013. In pursuance of the said order the present crime has been registered by the police. During the course of investigation it was revealed that the applicant along with other family members has committed the murder of Mrs. Pooja and thereafter she was cremated at Gawlior. After completion of investigation the police have filed the charge sheet.

2) The record discloses that the statements of mother and father of Mr. Kunal have not been recorded by the police. The said two persons are prime witnesses in the present crime in whose presence Pooja was abducted by the applicant and other persons. The first information report is lodged by Mr. Kunal Srivastava on the basis of the information given to him by his father and mother. It further appears from the record that the neighbours whose statements are recorded by the Investigating Agency and are at Page Nos. 61 to 67 to the present compilation have also stated about the fact of abduction of Mrs. Pooja by some persons and the threats extended by the accused persons to the mother and father of the complainant. It is surprising to note that, the Investigating officer has not taken any pains to establish the identify of the accused persons, to say, that the said persons were instrumental in abducting Mrs. Pooja from her matrimonial house at Kalyan.

3) The prosecution has relied upon another circumstance of cremation of Mrs. Pooja at Gawlior. In support of the said circumstance, the prosecution has recorded the statement of Mr.Rameshchandra Asure the caretaker of the crematorium at Gwalior. From the said witness a copy of the register maintained by the said crematorium has been seized by the police. In his statement the said witness has stated about the fact that father of the deceased Mrs. Pooja had been to the crematorium on

16.10.2013 at about 5.30 a.m. Initially, the co-accused i.e. father of Mrs. Pooja gave the name of deceased as Pooja and subsequently name is changed and given as Poonam. He has further stated that he was suspicious suspicion about the conduct of the father of Mrs. Pooja and therefore, he informed the said fact to Thatipur Police Station, Gawlior, M.P. The Police from Thatipur Police Station thereafter arrived at the said Crematorium and took the information from the father of Mrs. Pooja. It further appears from the record that father of Mrs. Pooja has given the information that the name of the deceased as Poonam, Aged about 27 years and the cause of death as 'fall'. The said witness has also given the numbers of vehicles which were parked at the said crematorium. The prosecution has relied upon further circumstance that the Splender Motor cycle No. MP-7/MA/7820 was parked out side the crematorium when the dead body of Mrs. Pooja was being cremated. The Investigating officer has not conducted the test identification parade of the applicant or other accused persons wherein the said witness was key person to identify the present applicant as one of the persons present at the time of cremation at Gawlior. The prosecution has also relied upon another circumstance i.e. the applicant was on leave from 11.10.2013 to 25.11.2013 and has relied upon the letter issued by Chhatisgad Armed Forces where the applicant was working. It is contended by the learned APP that Mrs. Pooja was abducted on 14.10.2014 and for her abduction the applicant had taken the leave during the said period. As stated herein above, the prosecution has failed to prove the identify of the applicant as the person who was instrumental in allegedly abducting Mrs. Pooja from Kalyan. In view of the evidence available on record, I am of the opinion that the applicant has made out a case for his release on bail.

Hence, the following order.

ORDER

- a) The applicant be released on bail in CR No. I-311-2013 registered with Bazarpeth Police Station, Kalyan on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.
- b) After his release from Jail the applicant shall furnish proof of his residential address and his mobile number, if any, to the Bazarpeth Police Station and also to the Trial Court.
- c) After his release from Jail the applicant shall attend the Bazarpeth Police Station, Kalyan on every 1st Monday of the month between 11.00 a.m. To 1.00 p.m. till the conclusion of the trial.
- d) The applicant shall also attend all the dates before the Trial Court.
- e) The applicant shall not tamper with the evidence and or influence the prosecution witnesses.
- f) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)