

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Miscellaneous Criminal Case No. 3133 of 2017**

Lokesh Kumar S/o Parturam Khare, aged about 32 years, R/o
Bhaisbod, P.S. Balod, District Balod, Chhattisgarh

---- Applicant**Versus**

State of Chhattisgarh through District Magistrate, Civil and Revenue
District Balod, Chhattisgarh

---- Respondent

For Applicant	:	Shri Amiyakant Tiwari, Advocate
For Respondent/State	:	Ms. Tripti Rao, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****01/09/2017**

This is the first bail application filed u/s 439 of Cr.P.C. for grant of bail to the applicant who has been arrested in connection with Crime No. 640/2016 registered at Police Station Balod, District Balod (CG) for the offence punishable under Section 302 read with Section 34 of IPC.

2. The case of the prosecution is that on 30.12.2016, a merg intimation was received by the P.S. Balod in respect of the death of Suman @ Savitri Khare, the wife of the present applicant. According to the complainant Tomanlal, on 26.12.2016 he was called upon by the brother of the applicant Niranjana intimating that the deceased had locked the door from inside and was not responding in spite of repeated calls being made. The other neighbours gathered there also called the wife of the applicant but there was no response. Ultimately, it was decided that the complainant would enter into the room with the aid of a ladder after lifting the roof sheet. Accordingly, the complainant entered into the room, opened the door which

was locked from inside and found the wife of the applicant Suman lying on the bed covered with a bed-sheet and that she was found dead. Based upon this, an FIR was lodged on 30.12.2016. In between, the body of the deceased was sent for postmortem which was conducted on 27.12.2016 and the doctor who had conducted the postmortem has given a report that the cause of death was due to throttling. Subsequently, the statement of the father, mother and brother of the deceased was recorded on 29.12.2017 wherein they have made a categorical statement before the Police Authorities of the accused persons i.e. the present applicant and his brother Niranjana having admitted the commission of murder of the deceased Suman by throttling. It is this alleged extra judicial confession on the basis of which the present applicant has been implicated in the offence.

3. Contention of the counsel for the applicant is that the applicant was not present in the house at the relevant point of time and that he had gone out which stands proved from the statement of Shobharam and Manpreet recorded under Section 161 CrPC during the course of investigation. He submits that the prosecution has not been able to provide sufficient explanation as to how the applicant and the other accused could escape from the room when the same was found locked from inside. It is also the contention of the counsel for the applicant that the statement of the father, mother and brother of the deceased cannot be taken as a vital piece of evidence as they are interested witnesses and whose statement has not been supported by a single independent witness during the course of the investigation. Thus, in the given factual facts and circumstances of the case, prayed for grant of bail.

4. State counsel, however, referring to the statement of Ankaluram, the father of the deceased as also mother and brother of the deceased opposes the bail application stating that there was an extra judicial

confession made by the accused persons before the family members with which the offence stands established so far as the applicant and the other accused having committed the offence is concerned. State counsel further refers to the statement of one Tikendra Kumar, the head of the Halba society of the village wherein he has made a statement of having held a previous meeting in the Halba society on an allegation of harassment and ill treatment made upon the deceased by the applicant and his brother. In the said meeting, the present applicant and his brother are said to have given an undertaking not to ill-treat the deceased nor would they harass the deceased. The State counsel referring to the statement of the said Tikendra submits that a strong inference has to be drawn of the commission of the offence at the hands of the present applicant.

5. Having considered the rival contentions put forth on either side and on perusal of the case diary what is reflected is that the deceased undoubtedly was suffering from Epilepsy disease. The other undisputed fact and the case of the prosecution is that the room where the deceased was found dead was her bedroom which was locked from inside. No proper explanation has been provided by the prosecution in respect of how the accused persons could escape from the room after commission of the offence when the room was found locked from inside. The statement of Tomanlal recorded during the course of investigation establishes the fact that the brother of the applicant Niranjan had gone out for attending a function. After returning home, he repeatedly called upon the deceased to open the door and it is only when he did not receive a positive response, he called upon the neighbours in whose presence, Tomanlal entered into the room with the aid of a ladder from the roof side and opened the door. All the facts create a great element of doubt regarding the commission of the offence by the present applicant. In the light of the doubt so created,

this Court is of the opinion that prima facie, a strong case for grant of bail has been made out.

6. Accordingly, the application for grant of bail is allowed. It is directed that in case the Applicant furnishes a personal bond for a sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the concerned Trial Court then he shall be released on bail on the following further conditions:-

- (i) that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (ii) that the Applicant shall not act, in any manner, which will be prejudicial to fair and expeditious trial; and
- (iii) that the Applicant shall appear before the Trial Court on each and every date given to him by the said Court till disposal of the trial.

Sd/-
(P. Sam Koshy)
JUDGE