

Anand

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

BAIL APPLICATION NO.13 OF 2017

Mohamad Rafi alias Rafique Wali Mohamad .Applicant
Chowdhary

Vs.

The State of Maharashtra .Respondent

Mr. F. Khan i/b. Mr. A. W. Khan, Advocate, for the Applicant
Mrs. P. P. Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 08.09.2017

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No. 90 of 2016 registered with the Oshiwara Police Station, Mumbai, for the alleged offences punishable under Section 302 & 452 of the Indian Penal Code.

3. Learned counsel for the Applicant submits that the Applicant has been falsely implicated in the said case. He submits that the Applicant was very much available even after the incident and that

he was not absconding as alleged. He further submitted that seizure of cushion (on which semen stains were found), at the instance of the Applicant, from the house of the deceased is suspicious and unbelievable.

4. Learned APP opposes the Application.

5. Perused the papers. The Applicant was working as a watchman in Rizwan Apartment, behram baug, Oshiwara, Mumbai, where the deceased – Mumtaz, aged 74 years, was residing with her husband, aged 75 years. The incident has taken place on 11.02.2016 in the afternoon. The Complainant – Ahmed is the grandson of the deceased. He has lodged the complaint as against unknown person. According to Abdul Badshah – husband of the deceased, he and his deceased wife – Mumtaz were residing in the said apartment. He has stated that whenever he left home for work, he would call his wife frequently and would instruct her, that she should not open the door for unknown persons. He has stated that he had instructed his wife that if any unknown person came, she should inform the Applicant, who was a caretaker/watchman of the building. He has stated that when he called his wife at 12.30 p.m., he received no response and hence, he called up

the Applicant on his mobile, however, he too was not contactable and hence, he asked his grandson – Ahmed to visit the house. Pursuant thereto, the deceased's grandson – Ahmed visited the apartment, peeped in from the window and saw his grandmother lying near the bed. Pursuant thereto, he broke open the door of the house and on going in, found his grandmother lying in a pool of blood. Pursuant thereto, he informed his parents. One Doctor staying in the vicinity examined the deceased and declared her to be dead. Pursuant thereto, an FIR was lodged by Ahmed as against unknown person.

6. The prosecution case rests entirely on circumstantial evidence. It appears from the record, that the Applicant was absconding soon after the incident and was apprehended in Kashmir from his residence. The police record supports the said fact. There is recovery of blood stained clothes at the instance of the Applicant. Semen stains were also found on the cushion lying in the house of the deceased. The DNA report received is positive. The cause of death is stated to be 'haemorrhage shock due to throat injury'. The possibility of the Applicant absconding cannot be ruled out.

7. Considering the prima facie material on record and the

possibility of the Applicant absconding, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected.

8. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)