IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.40 OF 2017

Santosh Bhimrao Kamble Applicant
versus
The State of Maharashtra Respondent

Mr.Vijayshankar Tiwari for Applicant.
Smt.J.S.Lohokare, APP, for State.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 24th July 2017

PC :

1. The Applicant was arrested in connection with CR No.211 of 2015 registered with Kalyan Taluka Police Station for offences punishable under Sections 302, 397, 394, 120B read with Section 34 of Indian Penal Code. The alleged crime was committed on 17th September 2015 and the Applicant was arrested on 28th September 2015.

2. It is the prosecution case that the complainant who is the husband of the deceased (wife) had stage managed the incident. The complainant was subsequently impleaded as accused no.1 in this case. Applicant/Accused no.1, his wife and their children were travelling by a car. The Applicant no.1 deliberately stopped the car on pretext of some problem in the headlight of the car. At that time some unknown persons came there. They assaulted the wife of the Applicant and took away her ornaments and cash of Rs.5,000/-. It is further the case of prosecution that the ornaments were handed over to one Sarika Kumbhar who is acquainted with the accused no.1. In

the statement of Sarika Kumbhar, it is stated that the ornaments were handed over by the Applicant in Bail Application No.40 of 2017 to the said witness. The investigating authorities have also recorded the statement of said witness under Section 164 of Code of Criminal Procedure, 1973.

3. It is submitted by learned advocate for Applicant that there is discrepancy in the evidence of prosecution. The Applicant has been falsely implicated in the crime. It is further submitted that the Applicant has not been identified by the witnesses. It is further submitted that the FIR was lodged against unknown persons/assailants in the crime.

4. Learned APP opposed the application for bail. Reliance was placed on the statement of Sarika Kumbhar. It is submitted that the ornaments were handed over by the Applicant Santosh Kamble to witness Sarika Kumbhar. It is further submitted that the said witness has spoken about the involvement of the accused no.1 and the Applicant on the basis of information given by accused no.1.

5. Perused the charge sheet. It is apparent that the FIR was lodged against unknown persons. There is no identification parade. It is alleged that the ornaments were handed over by the Applicant to Sarika Kumbhar. In the absence of any direct evidence involving the Applicant as the assailant at the time of incident, it cannot be said on the basis of handing over of the ornaments, that Applicant was one of the assailant who had assaulted the deceased. The investigation is complete. The Applicant is in custody since 28th September 2015.

6. In view of the aforesaid circumstances, bail can be granted to Applicant Santosh Bhimrao Kamble. Hence, I pass following order :

ORDER

(i) Bail Application No.40 of 2017 is allowed;

(ii) Applicant Santosh Bhimrao Kamble is directed to be released on bail in connection with CR No.211 of 2015 registered with Kalyan Taluka Police Station, District Thane, in Sessions case No.72 of 2016 pending before the Additional Sessions Judge, Kalyan, on furnishing PR Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The Applicant is directed to attend the investigating officer of Kalyan Taluka Police Station, District Thane once in a month on every first Saturday of the month between 11.00 a.m. and 1.00 p.m. till further orders;

(iv) The Applicant shall not tamper with the evidence and/or influence the witness in any manner whatsoever;

(v) The application is disposed of.

(PRAKASH D. NAIK, J.)

MST