

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

CRIMINAL BAIL APPLICATION NO. 196 OF 2017

Kumar Valmik Patil.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Subir Sarkar i/b. Mr. Hrishikesh Mundargi, advocate for Applicant.

Mrs. P.P. Shinde, APP for State.

Mr. A.R. Shelke, PSI, Ganeshpuri Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 6, 2017**

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused papers of investigation.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 7/12/2015 in

Crime No. 118 of 2015 registered at Ganeshpuri Police Station for offence punishable under section 302 of the Indian Penal Code.

3 The complainant is PSI Chetan Krushna Patil. On 7/12/2015 the complainant lodged a report at the police station alleging therein that on 5/12/2015 he was investigating A.D. No. 40 of 2015 registered under section 174 of the Code of Criminal Procedure, 1973. He had received post mortem notes. Dr. Amol Shette had conducted autopsy on the dead body of Ms. Minal Dinesh Dubhele and had given opinion that the cause of death could be hanging or throttling. The applicant was summoned to the police station. He had not appeared on 6/12/2015. They had contacted him on the cell phone and the reason was that his paternal aunt had expired and therefore, he had not appeared before the police. It was revealed in the course of investigation that the applicant and Ms. Minal Dubhele were engaged. On 4/12/2015 the applicant and Ms. Minal had been to Sangita Lodge. They had disclosed to the Manager of the Hotel that they were engaged and they had been to a temple and wanted to rest

for some time. The applicant had informed hotel manager that Minal had got convulsion and that she needs to be admitted in hospital. The Manager had visited the said room. The manager and Ms. Sangeeta and the applicant had taken her to Navjeevan hospital at Ambadi Naka.

4 Upon conducting scene of offence panchanama, there was no incriminating material, which can be observed. Minal was admitted in Navjeevan Hospital. That statement of Dr. Vinay Patil was recorded. He had disclosed that the patient was admitted in critical condition and that she was having unbearable pains. An enquiry was made with the grand-mother of Minal as to whether there is history of convulsion. The answer was in the negative.

5 Thereafter, the applicant had disclosed that Minal had hanged herself in the room of Sangita lodge. On further enquiry, it was learnt that Minal's parents had expired and therefore, she was residing at Shedgaon with her grand mother. Minal had disclosed earlier that

the applicant was suspecting her character. The applicant had disclosed further that Minal had consumed “fruity” just before she had died. He had also disclosed that there was no quarrel or dispute between them, however, they were enquiring with each other as to whether they had any affair in the past. He had also disclosed that he was not in the room when she hanged herself to the ceiling fan.

6 It is pertinent to note that in the post mortem notes, it is specifically stated that hyoid bone was fractured. She was admitted in the hospital. Dr. Shivshankar Akuskar has examined the victim in Orbit Hospital, wherein the history was given by the present applicant. The applicant had shown transfer letter of Navjeevan Hospital. He had given history of convulsion. It is further stated by the doctor that she had vomited and the vomit was smelling poisonous. The vomit could not be preserved for forensic analysis. The cause of death was given as hanging/throttling ??. There was fracture of hyoid bone. Column 17 also indicated that there was contusion wound noted on anterior part of neck about 9 cm. x 2 cm.

running horizontally extending from middle of right side of neck towards centre at level, bluish black in colour, Adams Apple, evidence of oedema mark, around contusion wound.

7 The learned Counsel for the applicant has vehemently submitted that after strangulation, the victim would not have survived for about 8 to 9 hours. According to the doctor, it was a case of throttling. It is also stated that throttling is compression of neck by means of fingers. In the present case, there was ligature marks which was running horizontally and yet the victim had survived for more than 8 hours.

8 Upon perusal of the papers of investigation, it appears that this is a case of circumstantial evidence. The victim had suffered fatal injury while she was in exclusive custody of the present applicant and therefore, cause of death/cause of fatal injury would be within the special knowledge of the applicant, for which he is bound to give

explanation under section 106 of the Indian Evidence Act in his statement under section 313 of Code of Criminal Procedure, 1973.

9 It is further pertinent to note that at the time of taking the victim to the hospital and even thereafter, when there was an enquiry with the applicant, he had attempted to give false explanation and misled the investigating agency. Despite the fact that there was no incriminating circumstance in the room in which the incident had occurred, the applicant had stated that Minal had attempted to hang herself to the ceiling fan. He had tried for help, but did not get any help and therefore, he had lowered her from ceiling fan and taken her to the hospital. He had then given an explanation that she had consumed fruity just before she had attempted suicide. At the hospital, the explanation that was given was that she had convulsion and upon enquiry with her grand-mother, it revealed that she had no history of convulsion. The conduct of the applicant can be considered at the time of trial under section 8 of the Indian Evidence Act, as he had attempted to give frail false explanations from time to time.

10 In the peculiar facts of this case, the applicant does not deserve to be granted bail at this stage. Hence, the application being sans merits stands rejected.

11 It is a case of circumstantial evidence and medical evidence would be the only relevant factor and therefore, the Sessions Court seized with the Sessions Case No. 29 of 2016 is requested to make an endeavour to conclude the recording of evidence as far as possible within 10 months from the date of framing of charge.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)