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

CRIMINAL BAIL APPLICATION NO. 300 OF 2017

Saurabhkumar Arvindkumar Dubey	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

Mr. E. B. Dixit a/w. Ms. Priyanka Dubey, Radha Agarwal i/b P. R. Yadav for the Applicant.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM : A.S. GADKARI, J.
DATE : 12th APRIL, 2017.

P. C. :

1. This is an application under Section 439 of the Code of Criminal Procedure for bail in C. R. No. I-163 of 2016 registered with Kapurbawdi Police Station, Thane under Section 302 of the Indian Penal Code.
2. It is the prosecution case that on 08.06.2016 between 4.00 to 5.00 p.m. (16.00 to 17.00 hours) when the deceased Jayprakash Tiwari was present in the office of Parvati Transport situated at Mozes Compound, Kapurbawdi, Thane, the applicant with a view to commit robbery gave a blow with an iron hammer on the head of the deceased and thereafter committed theft of the mobile phone from his pocket. During the course of investigation, the applicant was arrested on 09.06.2016. After completion of investigation, the police have submitted

charge-sheet on 29.08.2016.

3. I have perused the copy of the charge-sheet annexed to the application. The record reveals that the prosecution has propounded in all two main circumstances against the applicant.

The first circumstance is that the applicant was last seen near the scene of offence by witness, namely, Manoj Jaiswal at about 4.30 p.m. on the date of incident. The second circumstance is that blood stained clothes of the applicant and the cell phone of the deceased were recovered from his residential premises on 11.06.2016.

It is to be noted here that, as per the prosecution case the applicant has committed the murder of Jayprakash Tiwari on 08.06.2016 between 4.00 to 5.00 p.m. The witness, who saw the applicant near the scene of offence at about 4.30 p.m., has nowhere mentioned in his statement that there were blood stains on the clothes of the applicant. As far as the circumstance of blood stained clothes recovered from the residential premises of the applicant is concerned, the C.A. Report issued by F.S.L. mentions that the blood stains found on the said clothes are inconclusive. It, prima facie, appears that on 08.06.2016 at about 4.30 p.m. when the witness Manoj Jaiswal met the applicant near the scene of offence, either the applicant was not wearing the clothes which were having blood stains or the said witness was not present at the said spot.

4. Therefore, the only circumstance of recovery of the cell phone of the deceased at the instance of the applicant is the field. The applicant

is arrested on 09.06.2016 and since then he is in custody. The record discloses that there are no criminal antecedents at the discredit of the applicant.

5. In view thereof, I am of the opinion that the applicant can be released on bail.

Hence, the following order:

- (i) The applicant is released on bail on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- (ii) After his release, the applicant shall attend the Kapurbawdi Police Station, Thane once in a month on every first Monday.
- (iii) The applicant shall attend all the dates before the Trial Court.
- (iv) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.
- (v) The application is allowed in the above terms.

[A. S. GADKARI, J.]