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

CRIMINAL BAIL APPLICATION NO.305 OF 2017

Sohail Samad Sheikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL APPLICATION NO.171 OF 2017
IN
CRIMINAL BAIL APPLICATION NO.305 OF 2017***

Rajeshkumar Nandkishor Agrawal	...Intervener (Original Complainant)
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IN THE MATTER BETWEEN

Sohail Samad Sheikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.A.P.Mundargi, Senior Counsel a/w Mr.Abhishek Yende, for the Applicant.

Mr.R.M.Pethe, A.P.P for the Respondent-State.

Mr.Lokesh Zade i/b Mr.Praful Soni, for the Intervener/Original Complainant.

PI – J.S.Parabkar, Virar Police Station.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th SEPTEMBER, 2017

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the Applicant seeks his enlargement on bail in connection with C.R.No.I-463 of 2016 registered with the Virar Police Station, Palghar, for the alleged offences punishable under Sections 302, 376, 109, 120B of the Indian Penal Code.
3. Learned Senior Counsel for the applicant submitted that there is no material to connect the applicant with the alleged offences. He submitted that a perusal of the statements of some of the witnesses to whom extra judicial confession was made by co-accused – Deepak shows, that the applicant was not involved in the commission of the alleged offences. He submitted that at the highest the prosecution case shows that the applicant and the deceased were in a relationship. He submitted that the applicant is in custody since September, 2016 and that investigation is complete and charge-sheet is filed.

4. Learned APP opposed the application. Learned Counsel for the Intervener/Original Complainant, Mr.Lokesh Zade, also opposed the application. According to the learned counsel for the original complainant, as the deceased was insisting marriage, the applicant alongwith co-accused – Deepak conspired to kill the deceased.

5. Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears from the prosecution case, that on 2nd September, 2016, the deceased had been to the house of the co-accused – Deepak at about 10.30 a.m., to meet the applicant. It appears that co-accused – Deepak asked her to wait and stated that he would call the applicant; that co-accused – Deepak asked the deceased for sexual favour and when she refused, he tried to sexually assault her; that when deceased started shouting, co-accused – Deepak assaulted her with an axe on her head, neck and other parts of the body. A perusal of the statements of Shyam Mayekar, Vijay Madeshiya and , Rohit Madeshiya, the neighbours residing in the same chawl shows that on 2nd September, 2016, at around 1.30 p.m., they had seen the applicant and co-accused – Deepak pacing up and down, outside Deepak's room, suspiciously. The said witnesses have

stated that when they questioned Deepak about the noise and screams coming from his room and asked him to open the door, Deepak refused to open the door. They have stated that one Vishwanath Gurav asked Deepak to open the door and when Deepak opened the door, they went into the hall, they saw that there were clothes lying scattered around the hall, pursuant to which, they left the room, after which, co-accused – Deepak locked the room. They have further stated that at around 2.30 p.m., the applicant and co-accused – Deepak came with the police, opened the room and took them to the kitchen, where the deceased was seen lying in a pool of blood. According to the said witnesses, when they questioned, co-accused – Deepak, he disclosed that the deceased was going around with the applicant; that his (Deepak's) wife had gone to her parent's place about 20 to 25 days prior and that for about 3 days prior to the incident, the applicant was residing with him. He has stated that as the applicant was staying with him, the deceased was coming to his place, to meet the applicant. He has stated that on 2nd September, 2016 at about 10.30 a.m., deceased had come to his house to meet the applicant. He has stated that as the applicant was not at home, he told the deceased that he would call the applicant and asked her to wait in the house. He has stated that thereafter,

he asked the deceased for sexual favour and when she refused, he tried to sexually assault her; that when the deceased started shouting, he assaulted her with an axe on her head, neck and other parts of the body.

6. *Prima facie*, there is nothing to show that the applicant was present at the spot, when the deceased was assaulted by co-accused – Deepak, if the extra judicial confessions are considered. The statements of other witnesses would only show that the applicant was in a relationship with the deceased. There is no recovery of any weapon or any other material, at the instance of the applicant. There is also no material to show that the applicant conspired with co-accused- Deepak to kill the deceased. Investigation is complete and charge-sheet is filed.

7. Considering the material, qua the applicant, the application is allowed and the applicant is enlarged on bail on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two sureties in the like amount;

- ii) The Applicant shall attend the concerned Police Station, on the first Saturday of every month, between 10:00 a.m. to 11:00 a.m., till the conclusion of the trial;
- iii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- iv) The Applicant shall not contact the complainant, witnesses or any person concerned with the case;
- v) The Applicant shall co-operate in the conduct of the trial;
- vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Applicant, in the Registry of the trial Court, within one week of his release;

vii) It is made clear, that if there is breach of any of the conditions as stated above, the prosecution shall be at liberty to seek cancellation of Applicant's bail.

8. The Application is allowed and disposed of in above terms.

9. It is made clear, that the observations made herein are *prima facie* and are confined to this application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

10. In view of the aforesaid, the Intervention Application being Criminal Application No.171 of 2017 does not survive and the same is also disposed of.

11. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)