

nsc.

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

CRIMINAL BAIL APPLICATION NO.415 OF 2017

Javed Jabbar Memon	...Applicant
Versus	
The State of Maharashtra	...Respondent

***WITH
CRIMINAL APPLICATION NO.341 OF 2017
IN
CRIMINAL BAIL APPLICATION NO.415 OF 2017***

Chimanbhai S. Patel and Anr.	...Interveners
------------------------------	----------------

IN THE MATTER BETWEEN

Javed Jabbar Memon	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr.A.P.Mundargi, Senior Counsel i/b Shradha Sawant, for the Applicant.

Mr.V.V.Gangurde, A.P.P for the Respondent-State.

Mr.R.D.Suryawanshi, for the Interveners.

CORAM : REVATI MOHITE DERE, J.

DATE : 19th 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-96 of 2015 registered with the Jawhar Police Station, Palghar, for the alleged offences punishable under Sections 302, 201 r/w 34 of the Indian Penal Code.

3. Learned Senior Counsel for the applicant submits that prosecution case rests entirely on circumstantial evidence and that there are no incriminating substances to connect the applicant with the alleged offences. He submitted that the body was seen by one Ajay Khirari, Up-sarpanch and therefore the applicant showing the spot, where the dead body was thrown, does not inspire any confidence/significance. He submitted that according to the prosecution, one gunny bag was found at the spot where the dead body was lying, and that the said gunny bag is sought to be connected to the applicant. He submitted that similar gunny bags are sold in the market and therefore finding of the gunny bag near the spot, where the dead body was lying cannot be said to be incriminating. He submitted that even the statement of Ramu Lahanu Lokhande, with respect to last seen cannot be relied on, as Ramu Lokhande has expired. He further submitted that the statements of Rupesh Mukane, Kamina Patel, and the complainant

– Chimanbhai S. Patel, at the highest show that the applicant and the deceased – Madhuri, were having an affair and nothing more.

4. Learned APP opposed the application. He submitted that there are CDR records, which show that the applicant and deceased – Madhuri were in touch with each other, till she went missing. He relied on the statement of Rupesh (Madhuri's friend), who has stated that Madhuri (deceased) had disclosed to him on 6th December, 2015, that she was going to meet the applicant at about 6.00 to 6.30 pm., at the Stone Crusher, after which she was not contactable. He further relied on the statement of one Gopal Khirari, who has stated that he had seen Madhuri at about 6.00 to 6.30 pm., at Adkhadak Phata i.e. by-pass of Dahanu Road and had also seen co-accused – Madhukar Gangada, talking with deceased-Madhuri and taking her on his motorcycle towards Ghogaryachi Met (Stone Crusher). He submitted that the gunny bag, which was found at the spot matched the lot of the gunny bags, which were found in the applicant's shop. He further relied on the CDR records to show that the applicant and deceased – Madhuri were in touch with each other on the same day.

5. Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears that the applicant and deceased – Madhuri were in love and were going around for a few years. It appears from the statements of Rupesh Mukane, Kamina Patel, and the complainant – Chimanbhai S. Patel, that Madhuri had gone to meet the applicant – Javed Jabbar Memon on 6th December, 2015 at about 6.00 to 6.30 p.m. According to Rupesh, Madhuri (deceased) was insisting that the applicant – Javed marry her. The statement of Rupesh shows that deceased – Madhuri had disclosed to him that she was going to meet the applicant at about 6.00 to 6.30 p.m. According to Rupesh, Madhuri had met the applicant on 3rd December, 2015 at Jaisagar Dam. He has stated that as Madhuri was looking annoyed, he asked her as to what had happened, and that Madhuri is alleged to have told him, that the applicant had sought ten day's time to speak to his father regarding their marriage and that Javed had assured to marry her. He has further stated that on 6th December, 2015, the applicant had called her to the Stone Crusher and that he had asked Madhuri to sent him a message and accordingly Madhuri had sent a message to him, while going to meet the applicant. The statement of Kamina Patel, the sister of deceased-Madhuri shows that when she called the applicant and questioned

him about the whereabouts of her sister-Madhuri, he disclosed that she was not with him and thereafter refused to take her call. The statement of Gopal shows that the deceased-Madhuri was seen at Adkhadak Phata i.e. by-pass of Dahanu Road alongwith co-accused – Madhukar and that Madhukar had picked her and taken her on his motorcycle towards Ghogaryachi Met. The statement of Suresh Waje shows that on 6th December, 2015 at around 5.30 p.m., when he was working, the applicant asked him to leave with his dumper. The CDR records also support the fact that the applicant was in touch with deceased – Madhuri at the relevant time. Although nothing incriminating is found in the car in which the dead body was allegedly transported and later dumped, the statement of one Hanif Sayyed shows that on 6th December, 2015, the applicant asked for his car at around 7.30 p.m., and later returned the same at at about 9.40 p.m.

6. Considering the circumstances on record, this is not a fit case to enlarge the applicant on bail.

7. Accordingly, the application for bail is rejected and disposed of as such.

8. In view of the aforesaid, the Intervention Application being Criminal Application No.341 of 2017 does not survive and the same is also disposed of.

9. It is made clear that the observations made herein are *prima facie* for deciding the aforesaid application, and the learned Judge shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)