

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

CRIMINAL BAIL APPLICATION NO. 1452 OF 2017

Sunil @ Bandy Manoj Kalosa ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Pandit Kasar for the applicant.

Mr. R. M. Pethe, APP for the respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 27 JULY, 2017

P.C. :

1. This an application for bail. The applicant is arrested on 6th September, 2016 in connection with C.R. No.I-287 of 2016 registered with Hill Line Police Station, Kalyan for the offences punishable under sections 302, 342 of IPC as well as section 3 of The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.

2. The prosecution case is that deceased Santosh was behaving in rude manner as he was mentally unsound. On account of his behaviour the complainant and another person Sharifa took him to Manoj Maharaj accused no.1 for performing some rituals. The deceased was taken to house of accused no.1. The deceased was

assaulted by accused no.1 by giving blow of belt under pretext of performing rituals to cure his ailment. Accused no.1 is the father of applicant. Since accused no.1 could not control deceased, he called the applicant. The applicant thereafter came and caught hold of the deceased. Subsequently, hands and legs of deceased were tied with nylon rope by the applicant and other accused and then the deceased was assaulted with cane stick by accused no.1. The deceased had sustained several injuries on his person which has resulted into his death.

3. The FIR was registered as stated above on 6th September, 2016. The applicant and accused no.1 were arrested. Accused no.1 was in custody for a period about 40 days and he expired on 19th October, 2016 while he was in custody. The investigation is completed and the chargesheet has been filed. From the statement of the complainant which is recorded on 6th September, 2016, it is apparent that the deceased was mentally ill. He was behaving in abnormal manner. On 3rd September, 2016, the complainant was introduced to Manoj Maharaj accused no.1 by accused no.3. Accused no.1 performed certain rituals and informed the complainant, if the deceased continued to behave abnormally then they should approach

him. On 5th September, 2016, the deceased was taken to Manoj Maharaj (accused no.1). Thereafter the incident as stated above had occurred. The statement of the complainant was recorded under section 164 of Cr.P.C. on 26th September, 2016. In the said statement, she is completely silent about any role played by the applicant. The name of the applicant is not referred in the said statement. It is submitted by the learned counsel for the applicant that the evidence against the applicant had been in the nature of the statement which was recorded on 6th September, 2016 and 26th September, 2016. Both statements are contradictory to each other. In the subsequent statement, the involvement of the applicant is not reflected. It is submitted that prime role was attributed to accused no.1 who was in custody and expired while in custody. He, therefore, submitted that he may be granted bail.

4. Learned APP pointed the statement of the complainant and the other material on record.

5. Perused the chargesheet. Primarily, case of the prosecution is based on the statement of the complainant recorded on 6th September, 2016. However, the statement of the complainant recorded under section 164 of Cr.P. C. is completely silent with

regard to the role played by the applicant. In any case, the applicant was the person who allegedly caught hold of the deceased and subsequently tied him with nylon rope. The deceased was assaulted by accused no.1 who is the father of applicant. The intention to commit murder cannot be attributed to the applicant. The deceased accused no.1 has expired while he was in custody. The applicant is in jail since the date of his arrest. The chargesheet has been filed. No purpose will be served by detaining him in the custody. There are no antecedents against him. In view of the aforesaid circumstances, the application deserves to be allowed. Therefore, I pass following order;

:: ORDER ::

- (i) Bail Application No.1452 of 2017 is allowed.
- (ii) The applicant is directed to be released on bail in connection with C.R. No.I-287 of 2016 registered with Hill Line Police Station, Kalyan on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only.) with one or more sureties in the like amount.
- (iii) The applicant shall attend the concerned police station once in a month on the first day of month between 11.00 am to

1.00 pm till further orders.

(iv) The applicant shall attend trial Court on every date of hearing of the case.

(v) Application stands disposed of.

[PRAKASH D. NAIK, J.]