

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

BAIL APPLICATION NO.1848 OF 2016

Salman Salim Naje	... Applicant
Vs.	
The State of Maharashtra	... Respondent
And	
Mujamil Shabbir Naje	... Complainant

Mr.M.Saeed Kadu for the Applicant
Mr.Prashant Jadhav, APP, for Respondent – State
Mr.V.L. Kolekar for Complainant
Mr.R.D. Patil, API, Neral Police Station – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 20, 2017

P.C. :

1. 1.This application is moved by the applicant/accused for bail under section 439 of the Criminal Procedure Code as the applicant/accused is facing charges under sections 302, 377, 201 of the Indian Penal Code and under sections 4, 5 and 6 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act). It is the case of the prosecution that Mizan Naze, is the victim, aged 12 years. He was a resident of village Damat, Taluka Karjat, District Raigad. On 26.3.2015 at around 6 p.m., he went alongwith the applicant. The father and mother of the deceased

waited for him till 9 p.m., however, he was not found. So, they and the villagers started searching for him. They found the dead body of Mizan in a dilapidated house in one isolated garden. They could see some injury marks on his nose, his mouth and neck. Blood was also seen around his nostrils and mouth. The complainant Muzamil Shabbir Naze, the father of the deceased, thereafter approached the police, gave information. His statement was recorded on 27.3.2015 and the offence was registered with Neral Police Station, District Raigad, for the offences of murder. His body was sent for postmortem and thereafter the police applied sections 377 of the Indian Penal Code and also the sections 4, 5 and 6 of POCSO Act. The applicant/accused Salman was arrested on the same day i.e., 27.3.2015. Hence, this Bail Application.

2. The learned Counsel for the applicant/accused has submitted that there is no evidence against the applicant/accused. He is innocent and he is a boy of 22 years old. Except the last seen together theory, no other evidence is produced before the Court. He submitted that there is no eye witness to the incident of murder and the applicant/accused be released on bail.

3. Learned Prosecutor as also the learned Counsel for the complainant have opposed the Bail Application and relied on the FIR, the statements of one Sarfaraz Abdul Kadir Tiwale and Hanif Yusuf Naze, the persons who have seen the accused and the deceased lastly together going towards the isolated garden. The learned Prosecutor produced out the C.A. Report and pointed out that it discloses semen found on the clothes of the deceased and on the trousers of the accused, as per the DNA report matched with the male blood sample of the accused i.e., Salman Naze. Both the learned Counsel for the complainant and the learned Prosecutor relied on the postmortem report and the opinion of the medical officer which is as follows:

“8. Contusion circling anal opening is evidence. Anal opening is situated more deeply and patulous, anal canal is dilated and dilatation is consistent with the entry of the penis and is suggestive of victim probably being a habitual passive agent.”

4. Perused the documents which are pointed out by the learned Counsel for both sides. The case stands on the circumstantial evidence. The applicant/accused is facing charges under section 377 of the Indian Penal Code and under section 4, 5 and 6 of the POCSO Act and, therefore, the eye witness is not expected. The

submissions of the learned Prosecutor in respect of medical report and the postmortem report as also the C.A. Report are taken into account. Considering all this, it appears to be a case of unnatural sexual assault and murder. In my view, therefore, bail cannot be granted.

5. Bail Application is accordingly rejected.
6. Criminal application for intervention stands disposed of.

(MRIDULA BHATKAR, J.)