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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION No. 183 OF 2018

Anita Shaam Khandekar	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket Ujwal Nikar I/b Mr. Ashish Satpute, for the Applicant.
Mr. S. R. Agarkar, APP for the Respondent – State.

CORAM : P. N. DESHMUKH, J.

DATE : MARCH 1, 2018

PC :-

1. Applicant is involved in C. R. No. 297 / 2017 registered with Hadapsar Police Station, Pune for offenses under section 302, 363, 201 of the Indian Penal Code. Applicant has filed this application for grant of bail.
2. Heard learned counsel for Applicant and Additional Public Prosecutor for Respondent-State. Admittedly, charge-sheet in the case is filed before the competent Court. Learned counsel for Applicant contended that there is absolutely no iota of evidence

establishing involvement of Applicant in the present crime. Referring to the documents filed with the charge-sheet, it is contended that prosecution has not collected any material evidence establishing involvement of Applicant. Therefore, it is prayed that Application be allowed by imposing suitable conditions as Applicant is a female, aged 29 years and is falsely involved since related as aunt of deceased, though there is nothing to establish her involvement in the murder of minor Ayush aged 5 years.

3. Learned Additional Public Prosecutor, on the other hand, opposed the Application and submitted that from the statement of Swati Anand Bura, it is established that Applicant was last seen in the company of deceased. It is further contended that from the recovery of cellphone of Applicant, it is established that she has used said cellphone to make a phone call to Complainant Vinod Khandekar, father of deceased and has therefore, submitted that if statement of Swati as well as contents of report, and recovery panchnama effected at the instance of the Applicant is considered collectively, Applicant's involvement is established. It is therefore, prayed that application is liable to be rejected.

4. In the background of submissions advanced as aforesaid from the report, it is noted that a complaint came to be lodged by the father of deceased Ayush on 23rd March 2017. On that day, complainant's minor son Ayush after leaving house at 9 a.m. did not return back till around 12 noon. On that day, complainant received phone call on his mobile from cell No. 7058532619 fromt one female informing him that his son is present at Jejuri Bus Stand and he is should reach there. Complainant accordingly though reached Jejuri Bus Stand and tried to contact said female on number 7058532619, he could not establish the contact and therefore, with the assistance of local police searched for son, however, he could not locate him, and thus, lodged a report.

5. Prosecution appear to have apprehended Applicant on suspicion on the basis of her own statement, which cannot be considered against her. Except this, there is no evidence against Applicant showing her involvement in the crime. In fact, it is material to note that even no investigation is carried out to trace any sim card having mobile number 7058532619. Prosecution to establish involvement of Applicant though relied upon recovery panchnama

which came to be drawn at the instance of Applicant on 24th March 2017 under which dead body of deceased is recovered from one drum containing water from the house of Applicant, there is no other corroborative evidence to establish involvement of Applicant in the crime.

6. Learned APP to establish involvement of Applicant, has also relied on statement of one Shobha who had stated that on 23.3.2017 though she along with other females from the locality searched for deceased, they could not find him and that when they came at the house of Applicant, noted that door of her house was closed and Applicant was present inside. Therefore, she had inquired with the Applicant as to why she is not out, searching for the minor deceased, upon which Applicant informed that since she was not feeling well, she was in the house. Referring to such contents of the statement of Shobha, it is therefore contended that her conduct is sufficient to establish her involvement. However, above evidence is too short to be relied upon against the Applicant, more particularly, bare statement of Shobha is recorded two days after the arrest of Applicant.

7. Moreover, prosecution has not filed opinion as to cause of death of deceased alongwith the charge-sheet. From the documents, it is found that opinion on this aspect was reserved for want of viscera report. Learned APP, on instructions from the I.O. who is present in the Court, states that no report is yet collected. In view of the above facts, following order is passed:

- i) Application is allowed.
- ii) Applicant be released on bail on executing PR Bond in the sum of Rs. 25,000/- with one surety in the like amount.
- iii) The Applicant shall attend the Hadapsar police station Pune on the 1st day of each month for the period of 6 months and thereafter quarterly on the first day of such month pending the trial.
- iv) Learned Trial Court shall not get influenced by any of the observations made hereinabove and shall evaluate independently the evidence at the trial.

Sd/-
[P. N. DESHMUKH, J.]

Vinayak Halemath