

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

BAIL APPLICATION NO.1287 OF 2018

Lavkush Hargovind Agrahari (Gupta) Applicant

Vs.

The State of Maharashtra Respondent

Mr. Aniket U. Nikam for the Applicant.
Mr. Prashant Jadhav, APP for the State.

***Coram : Smt. Sadhana S. Jadhav, J.
Date : 8th August, 2018***

P.C.:

1 Heard the learned counsel for the applicant and the
learned APP.

2 This is an application under Section 439 Code of Criminal
Procedure. The applicant herein is arrested on 16th September 2017
in Crime No.315 of 2017, registered at Satpur Police Station for the
offences punishable under Sections 302, 201 read with 34 Indian
Penal Code.

3 It is the case of the prosecution that the brother of the present applicant namely Shahendrakumar Govind Gupta was married to Saraswati Gupta. They were residing at Saki Naka, Mumbai. The present applicant and his younger brother were residing at Satpur, Nashik. That Shahendrakumar and his wife Saraswati had been to Nashik to meet the present applicant and his brother. On 12th September 2017, the dead-body of Saraswati was found in the canal. The body was sent for post-mortem.

4 The Advance Cause of Death Certificate dated 12th September 2017 issued by Civil Hospital, Nashik shows the description of name of deceased as unknown female 40-45 years old. Cause of death is due to combined effect of asphyxia due to manual strangulation and cerebral damage due to blunt trauma to head, which was sufficient to cause death in ordinary course of nature individually and collectively. Time since death is between 3 to 5 days.

5 The police of Satpur had received an anonymous letter informing them Shahendrakumar Gupta has killed his wife and is in the process of absconding after abandoning her dead-body. On the basis of the said secret information, the investigation was set in motion. On 13th September 2017, Shahendrakumar Gupta was arrested. While in police custody, the memorandum was recorded under Section 27 of the Indian Evidence Act. He had shown the place where he had abandoned the dead-body. The place where he had strangled her and there was recovery of the cellphone of Saraswati at the hands of Shahendrakumar Gupta. It appears that Shahendrakumar Gupta had shown some involvement of the present applicant while in custody. On 13th September 2017, statement of brother of the deceased was recorded and he had informed to the Police that in the intervening night of 7th and 8th December 2017, he had called upon his sister. She had informed him at that juncture, that her elder brother-in-law, Mahendra is standing next to her and that they are abusing and quarreling with her. She had not called up her brother thereafter. At the same time, she had called upon

another brother and informed him that she is being abused by the present applicant also. Thereafter the phone was disconnected and there was no contact between the brothers and sister. Her brother had become suspicious and therefore he had been to her house at Saki Naka, where he learnt Shahendrakumar Gupta and his wife are at Nashik. When they reached Nashik, they found Shahendrakumar Gupta was giving evasive answers.

6 As far as role of the present applicant is concerned, besides the fact that the incident occurred in his house and that the dead-body was abandoned subsequently. There is no material against the present applicant. The applicant could be liable for an offence punishable under Section 201 of Indian Penal Code i.e. for causing of disappearance of evidence.

7 Learned counsel for the applicant, upon instructions, submits that co-accused Sanjay who happens to be the brother of the present applicant and the principal accused Shahendrakumar Gupta

has been enlarged on bail by the Sessions Court. Learned APP submits that the cellphone of the deceased was recovered from the house of the present applicant. Moreover, he had shown the place of offence on 19th September 2017 and hence he does not deserve to be enlarged on bail. It is pertinent to note that Shahendrakumar Gupta was arrested on 13th September 2017 and he had already shown the place of offence on 14th September 2017. The recovery of cellphone was made at the instance of Shahendrakumar Gupta.

8 In view of aforementioned facts, the applicant deserves to be enlarged on bail. It is clear that Shahendrakumar Gupta shall not claim parity with the present applicant, as there is incriminating material against him, which would clearly indicate that Saraswati has died homicidal death at his hands and he has abandoned the dead-body.

9 The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial. Hence, the order :

ORDER

- i) The application is allowed.
- ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall not leave District Nashik till conclusion of the trial and shall report to the concerned police station on first Sunday of each month, till framing of the Charge.

(Smt. Sadhana S. Jadhav, J)