

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1783 OF 2018

Rakesh Mahesh Patel, Age 30 years,
Occ.Service, R/o.Room No.16,
Building No.178, Indian Compound,
Gundavali Village, Tal.Bhiwandi,
District Thane (Presently lodged at
Taloja Jail)

Applicant

versus

The State of Maharashtra

Respondent

Mr.Raju D. Suryawanshi for applicant.
Mr.Y.Y.Dabke, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 21st September 2018

PC :

1. This is an application for bail in connection with CR No.I-50 of 2018 registered with Narpoli Police Station for the offences punishable under Sections 302, 201, r/w 34 of Indian Penal Code. The complaint was lodged by Viren Dharmaraj Yadav on 1st February 2018.

2. The prosecution case is that in September-2015 the complainant was married to accused no.1 Mamata Yadav. After the said wedlock they were blessed with a child named Aaryan aged about 14 months at the time of incident. The complainant was not having residence in Bhiwandi, hence he started residing with the applicant. The complainant was suspicious about his wife having

affair with the applicant. The complainant thereafter learnt that the applicant is having affair with his wife. The complainant took his wife to native place at Uttar Pradesh. In December-2017 the complainant's wife returned to Bhiwandi and started staying with the applicant-accused. On 30th January 2018, at about 9.15 p.m, the complainant was informed that his son has passed away. The complainant immediately rushed to the place where the applicant and accused no.1 were residing with his son. He was informed that the applicant-accused and another person had taken the body of his deceased son for burial. The complainant went to Mankoli Police Station to lodge complaint. On 31st January 2018 Mohammed Munnemiya informed about the place where the body of complainant's son was buried. It was then noticed that the child had died on account of strangulation. Postmortem report was conducted after exhuming the body. The offence was registered as stated above against the applicant and the complainant's wife. During the course of investigation it was revealed that the accused had conspired to kill the child being obstacle in their relationship.

3. Learned counsel for the applicant submits that there is no evidence to charge the applicant for offence u/s 302 of Indian Penal Code. The applicant was not present at the scene of offence at the time of the alleged strangulation. The act of strangulation is attributed to the accused no.1. Taking the prosecution case as it is, at the most, it could be said that the applicant is a person who had buried the body of the deceased and thereby committed an offence u/s 201 of IPC. Considering the punishment prescribed for the said offence and the fact that the applicant is in custody since the date of arrest, further detention is not necessary. It is submitted that

reading the statement of the complainant recorded on 1st February 2018, the applicant cannot be charged for the offence u/s 302 of IPC. There was an alleged affair between the applicant and the accused no.1. No overt act of strangulation is attributed to the applicant. It is also submitted that taking into consideration the statements of the witnesses and the post mortem report it will have to be concluded that the applicant was not present at the place of incident at the time of the alleged incident of strangulation. It is thus submitted that the applicant be released on bail.

4. Learned APP submitted that there was relationship between the applicant and the wife of the complainant. Both of them had decided to get away with the child and had conspired to kill the child. Pursuant to the conspiracy the child was strangled. The applicant then buried the child with a view to destroy the evidence and tried to portray that the child was ailing and died due to sickness. It is submitted that the applicant was at the scene of offence at the time of death of the child and he cannot feign ignorance to the alleged crime by stating that he is only responsible for committing an offence u/s 201 of IPC. The offence is very serious. The child of 14 months was killed by both the accused and thus, the applicant is not entitled for bail.

5. The prosecution case is that the complainant, his wife (accused no.1) and the applicant-accused were residing in the same premises. The applicant and accused no.1 had developed illicit relationship. They were having an affair. They desired to marry each other. The deceased, a 14 months old son being issue from the first marriage, was obstacle for said marriage. To remove the said obstacle the

innocent child was cruelly murdered. The case of the prosecution is that the accused no.1 and the applicant had conspired to kill the child. The applicant was present in the house at the time of death of the child. The strangulation is the consequence of conspiracy between the accused. The applicant tried to portray that the child was ailing and died on account of sickness and to cover the offence of murder, the applicant had surreptitiously buried the child. The death was on account of strangulation. The statements of witnesses supports the prosecution case. The applicant cannot be absolved by accepting his case that he is only responsible for offence u/s 201 of IPC. It is also pertinent to note that the statement of Chunmun Kumar indicates that the applicant was in the house at 6 p.m at the time of death of the child. The statement of Mukul Rai refers to his conversation with the applicant-accused which they had in January-2018 wherein the accused-applicant had informed him that he is in love with Mamta which is also reciprocated by her. They intend to marry. However, the son of Virendra is with them and some arrangement in that regard has to be done. The circumstances reflect that the child was an obstacle for the accused. There is sufficient material to show the involvement of applicant. Hence, case for grant of bail is therefore not made out. Accordingly, the application is rejected. The observations made herein are prima facie for considering application for bail and Trial Court shall deal with the case in accordance with law.

(PRAKASH D. NAIK, J.)

MST