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

CRIMINAL APPLICATION NO.1112 OF 2017

IN

CRIMINAL APPEAL NO. 710 OF 2017

Parvinder Swaran Sing

... Applicant/Appellant.

V/s.

The State of Maharashtra.

... Respondent.

Mr. A.P. Mundargi, Senior Advocate i/b. Satyam H. Nimbalkar for
the Applicant/Appellant.

Mr. H.J. Dedhia, APP for the Respondent - State.

***CORAM : S.S. Shinde and
Mrs. Mridula Bhatkar, JJ.***

DATE : 5th October 2018.

P.C. :-

The Applicant – accused is convicted by the judgment and order dated 17th May 2017, passed by the Additional Sessions Judge, Pune in Sessions Case No. 114 of 2013, for the offence punishable under Section 364-A r/w. Section 120-B of the Indian Penal Code and also under Section 302 r/w. Section 120-B of the Indian Penal Code for imprisonment of life and fine.

2. As per the case of the prosecution, the Applicant – accused alongwith co-accused Sundersingh, who is juvenile in conflict with law had conspired and kidnapped deceased Shubh, a minor boy of 5 years old, who is also son of the complainant, with a motive to demand ransom of Rs.5.00 to Rs.10.00 lakhs and killed him. The learned Senior Advocate appearing for the Applicant – accused has submitted that the Applicant – accused was on bail throughout the trial. He does not have any criminal records. He was boy of 19 to 20 years when incident took place. The learned Senior Counsel has submitted that there is no sufficient evidence to hold the Applicant – accused guilty. He submitted that the Trial Court ought not to have accepted and relied on the inadmissible evidence especially the evidence of showing spot where the body was lying. The said panchnama (Exhibit 47) is not the panchnama under Section 27 of the Indian Evidence Act and cannot be relied. He has further submitted that the learned Judge had relied on the confession made by the Applicant – accused by treating it as an extra-judicial confession which in fact is not as it was made in the presence of the police. He has further argued that there is no nexus between the Applicant – accused and the incident of murder. He submitted that the incident of the murder cannot be attributed to the Applicant – accused in the absence of sufficient and clinching evidence. He has further argued that the Trial Court has considered evidence and confession of the co-accused who is

juvenile. Such confession is not admissible against co-accused. Said co-accused is not yet tried and his case is pending.

3. The learned APP for the State while opposing this Bail Application has supported the judgment passed by the learned Sessions Judge convicting the Applicant – accused. He has submitted that the deceased was playing in the compound of the house on 23rd September 2012 at around 7.30 p.m. There is evidence of PW-2 Roshan Mane, who has deposed about presence of the Applicant – Accused near the deceased at around 8.45 p.m. and thus, there is complete evidence of last seen together and thereafter, immediately within half hour the boy was found dead. Body of the deceased was found at the instance of the Applicant – accused. Moreover, there was a motive of demand of ransom amount of Rs.5.00 to Rs.10.00 lakhs. Thus, this is a sufficient evidence against the Applicant – accused and thus, as he has committed an offence of murder, bail cannot be granted.

4. Perused the documents and the evidence placed before us. Considered the submissions of both the sides. The Applicant – accused was on bail throughout the trial. On query it is found that he has no criminal record and has not abused the bail. He was 19 to 20 years old when the incident of murder has taken place. We have taken into account the submissions of the learned Senior Advocate on the point of admissibility of the evidence of showing this Court the spot from where the body was recovered that is

Exhibit 47 so also submissions of the learned Senior Advocate in respect of the point of admissibility of the confession made by the accused in the presence of police officer. Though there is evidence of PW-2 on the point of last seen together, it appears that the other witness who had accompanied PW-2 Roshan Mane is not examined and considering the nature of the evidence tendered before the Trial Court, we are inclined to allow this bail application on the following terms and conditions :-

- (i) The Criminal Bail Application is allowed.
- (ii) The Applicant – accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- (Thirty Thousand only) with one or two sureties in the like amount.
- (iii) The Applicant – accused shall not leave India without prior permission of this Court.
- (iv) The Applicant – accused shall not tamper with the evidence or pressurize the witnesses.
- (v) The Applicant – accused shall not indulge into any criminal activity.

(vi) The Applicant – accused shall furnish his permanent address to the Investigating Officer alongwith documentary proof.

(Mrs. Mridula Bhatkar, J.)

(S.S. Shinde, J.)

Jyoti
Prakash
Pawar

Digitally signed
by Jyoti
Prakash Pawar
Date:
2018.10.08
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