

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

BAIL APPLICATION NO. 2098 OF 2017

Gautamkumar B. Gupta

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Mr. Rajendra Narvankar for the Applicant.

Mr. S.S. Hulke, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 1st FEBRUARY, 2018

P.C.:

. This is an application under Section 439 of Cr.P.C. for bail in C.R. No. 301 of 2016 dated 01.12.2016 registered with Borivali Railway Police Station, Mumbai under Sections 302 and 201 read with Section 34 of the Indian Penal Code.

2 Heard the learned Counsel for the Applicant and the learned APP. Perused the charge-sheet.

3 The name of the deceased is Smt. Priyanka @ Soni Dinesh Varma. The dead body of Smt. Priyanka Varma was found on the railway track between Kandivali and Borivali Railway Station on 14.11.2016 at about 5.30 a.m. It is the prosecution case that the said Smt. Priyanka Varma was the wife of absconding accused Dinesh Varma. Due to the quarrels *inter-se* between them on the date of

incident, Dinesh Varma committed murder of Priyanka Varma by strangulating her by hand. It is alleged that at that time, the Applicant caught hold the hand of deceased. It is further alleged that, after the said Priyanka Varma died, the Applicant and principal accused Dinesh Varma with a view to screen the evidence put her dead body in the trolley/traveler bag and thereafter, took it to the railway tracks between Kandivali and Borivali railway stations and thereafter, threw the dead body on railway track. During the course of investigation, the Applicant came to be arrested on 09.12.2016 and after completion of investigation, the police have submitted charge-sheet.

4 The record indicates that principal accused Dinesh Varma is still absconding. The material available on record against the Applicant in the present crime is that, at his instance, the said trolley bag from which the dead body of Priyanka Varma was carried is recovered by effecting recovery panchnama dated 14.12.2016. It is to be noted here that the said trolley bag is admeasuring about 28x18x8 inches and the same was recovered from a bush which was near the railway track. Prima facie, it appears that the said recovery is effected from an open space accessible to many persons and after taking into consideration the size of the said bag, it cannot be said that it could have been concealed by the Applicant at the said place which could not have been noticed by any body else. It prima facie appears that Applicant came to be arrested on the ground of suspicion and thereafter the said recovery has been effected. It is the settled

position of law that the suspicion however strong it may be, cannot take place of legal proof.

5 In view of the above, Applicant can be released on bail.

Hence, the following order:-

i) The applicant be released on bail in C.R. No. 301 of 2016 dated 01.12.2016 registered with Borivali Railway Police Station, Mumbai on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

ii) After his release from jail, the applicant shall attend concerned Police Station once in month i.e. on every first Monday of the month between 11.00 a.m. to 2.00 p.m.

iii) The applicant shall also attend all dates before the Trial Court.

iv) The Applicant shall not tamper with the evidence and/or pressurize or threaten the prosecution witnesses.

v) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)