

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

**CRIMINAL APPLICATION NO.1315 OF 2017
IN
CRIMINAL APPEAL NO.188 OF 2013**

Dinesh @ Saifan Sunkappa Kunchikurve Applicant

versus

The State of Maharashtra ... Respondent

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- Mr.S.V. Marwadi i/b. Mr.Shailesh I. Kantharia, Advocate for the Applicant.
- Mrs.M.H. Mhatre, APP for the State/Respondent.
- Mr.V.N. Tayade, Advocate for the Respondent/Complainant.

**CORAM : B. R. GAVAI &
SARANG V. KOTWAL, JJ.
DATE : 07th JUNE, 2018.**

P.C. :

1. This is the Application for suspension of sentence and for grant of bail during pendency of the Appeal.
2. The Applicant was charged for committing murder of one Rakesh @ Yallapa on 02/11/2011. The prosecution case is that the Appellant and the deceased were having enmical

relations on account of one love affair of the sister of the Accused, Laxmi with one Vijay Sunkappa.

3. The Applicant has been arrested on 04/11/2011.
4. The present case rests basically on the circumstantial evidence. As held by the Apex Court in the case of *Niranjan Singh and another Vs. Prabhakar Rajaram Kharote and Other, reported in (1980) 2 SCC 559* elaborate discussion of evidence at the stage of grant of bail will have to be avoided.
5. The Application is vehemently opposed by the learned Counsel appearing for the Original Complainant.
6. The principles governing the conviction in the case based on the circumstantial evidence are very well crystallized in the case of *Sharad Birdhichand Sarda Vs. State of Maharashtra, reported in AIR 1984 SC 1622*. For sustaining conviction on the basis of circumstantial evidence it is not only

necessary for the prosecution to prove the incriminating circumstance, but also to establish a chain of proven circumstances, which lead to no other conclusion than the guilt of the accused. In the present case, on the perusal of the Judgment it is revealed that the learned Trial Judge has held that prosecution has proved two circumstances one that on memorandum u/s 27 of the Indian Evidence Act, knife which is allegedly used in the crime, came to be recovered at the instance of present Appellant. Secondly that the prosecution has proved a motive.

7. Insofar as the first circumstance is concerned, the recovery of knife at the instance of the present Applicant on memorandum under Section 27 of Evidence Act is from a Municipal Corporation dustbin. As such, prima facie, we are of the view that much weightage cannot be granted to such a recovery. That leaves with other circumstance of motive.

8. At this stage, we are of the prima facie view that

conviction only on the basis of circumstantial evidence would not be tenable. It is held by the Apex Court that every hypothesis in consistent with the guilt of the accused is to be ruled out. The prosecution has not fulfilled the essential requirements of a criminal case which rests purely on circumstantial evidence.

9. In that view of the matter, we find that the Applicant has a good case on merits. The Application is allowed. The order of sentence is suspended.

10. The Applicant is directed to be released on bail on furnishing bail bond in the sum of Rs.10,000/- with one or more sureties in the like amount. The Applicant shall report to the Investigating Officer on first Monday of every month.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)