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

**CRIMINAL APPLICATION NO.1330 OF 2017
(For Bail)
IN
CRIMINAL APPEAL NO.913 OF 2013**

Suhas Mahadev Roge

..... Applicant.

V/s

The State of Maharashtra
(D.C.B., C.I.D. Unit-1, Mumbai)

..... Respondents.

Mr. S.M. Gorwadkar, Senior Advocate a/w Nihar Ghag i/b Mr. Archit Sakhalkar, Advocates for the Applicant.

Mr. Deepak Thakre, Government Pleader a/w Mr. Rajan Salvi, APP for Respondents/State.

Mr. Abad Ponda a/w Mr. Karma Vivan, Advocates for the Applicant in APPA/177/2018 for brother of the deceased.

Mr. Rama D. Pawade, Advocate for the Applicant in APPA/774/2014, APPA/135/2015 and APPA/654/2016.

**CORAM: B. R. GAVAI &
B. P. COLABAWALLA, JJ.**

DATE: 7th FEBRUARY, 2018

P.C.:-

1] This is an application for bail, pending hearing of the appeal.

2] The Appellant – Applicant along with other seven accused have been convicted for the offence punishable under Section 302 read with

Section 120B of the Indian Penal Code.

3] Prosecution case is that, the accused person hatched a conspiracy to do away with deceased Suresh Bhagat. He was to attend the Sessions Court on 13/06/2008 in connection with NDPS case. It is the prosecution case that, accused No.4, accused No.7, accused No.8 and accused No.6 gave Supari to accused No.3 to eliminate the deceased by ensuring that, there is a head-on collusion of the truck, which would be driven by Respondent No.3 with the Scorpio vehicle in which the deceased was travelling.

4] The present Applicant was arrested on 19/06/2008. Undoubtedly, though, initially, there were eye witnesses, none of the eye witnesses have supported the prosecution case and now the case of the prosecution rests entirely on the circumstantial evidence.

5] As held by the Apex Court in *Niranjan Singh and Another vs. Prabhakar Rajaram Kharote and Others*¹, detailed elaboration of evidence at this stage, will have to be avoided. However, by now it is a settled principle of law that, for resting conviction in the case of circumstantial evidence, prosecution will have to firstly prove each and every incriminating circumstance beyond reasonable doubt and secondly, establish a chain of events which leads to no other conclusion than the guilt of the accused. As held by the Apex Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra*², there is

1 (1980) 2 SCC 559

2 AIR 1984 SC 1622

not only a grammatical distinction between “may” and “must” but also legal distinction. The conviction cannot be based only on the possibility of the accused having committed crime but can be rested only when the Court finds that circumstantial evidence is so strong that, it leads to conclusion that it is only the accused present before the Court, who could have committed the crime and none else. In the light of this legal position laid down by the Hon'ble Apex Court, we will have to examine the present case.

6] The prosecution mainly relies on the evidence of P.W. 5 Kiran Pujari, who was said to be one person who had given Supari to Respondent No.3. P.W. 15 – Vinod Naik, who is said to be a car mechanic and who is also said to be having friendly relations with the present Applicant P.W. 16 – Joseph is a person, who is said to have received extra judicial confession from the present Applicant.

7] Insofar as evidence of P.W. 5 – Kiran Pujari is concerned, in paras 16 and 17, he states that the present Applicant had called him on 13/06/2008 at around 2.30 P.M. to 3.00 P.M at Ranibaug. When he went there, while coming back in Maruti van towards Mantralaya, according to the said witness, the accused told him that Suresh Bhagat died in the accident by dash of the truck when he was returning from Alibaug Court. It is stated that, on his asking as to whether he had really done it, the accused – Applicant replied 'Yes'. However, in para 84 of his cross-examination, he has stated thus :

“84. It is not true to say that I meet Suhas Roge on 13/06/2008 and he told me that he succeeded in killing Suresh Bhagat in fake accident.....”

We had a doubt as to whether the evidence recorded of this witness (P.W.5) is having any error and therefore asked the learned Government Pleader as to whether his deposition is available in vernacular. We are informed that his evidence was taken in English and is recorded as deposed by him. In that view of the matter, whatever has been stated by him in his examination-in-chief is totally watered down in his cross-examination.

8] Insofar as P.W. 16 is concerned, he has stated that, after 4 to 5 months after the incident took place, he received a phone call from the accused – Applicant and he said that, he is at the house of Sanjay Shirke. When he went to his house, there was one person having cap, whose name was Vinod. He has further stated that, at that time, the present Applicant stated that, he had done the said incident of accident with the help of Harish Mandvikar (***“Yeh maine Harish Mandvikar ko supari dekhe karvaya”***). However, perusal of para 45 of his cross-examination would reveal that the said version is given by way of an improvement and does not find place in his police statement.

9] P.W. 15 is Vinod Naik. It is the prosecution case that, similar extra judicial confession has been given to the said witness also. However, police statement of this witness has been recorded after one and half years.

10] As such, it would reveal that the prosecution mainly relies on the evidence of approver and two extra judicial confessions. It is a settled principle of law that evidence of approver is a weak piece of evidence. Equally it is settled that, it is not safe to rely only on the extra judicial confession, unless some corroboration is found to support such extra judicial confession.

11] No doubt that the learned Trial Judge has relied on CDRs which have come on record in the evidence of Nodal Officer. The learned Judge relying on the judgment of the Apex Court in the case of *State (NCT of Delhi) vs. Navjot Sandhu*¹, has taken the same into consideration. We do not find any fault in the approach of the learned Trial Judge in relying on the said CDRs inasmuch as the law as existed on that date permitted him to do so. However, subsequently, in view of the judgment of the Apex Court in *Anvar P.V. Vs. P.K. Basheer and Others*², such evidence cannot be taken into consideration, unless there is certificate issued by the competent authority under section 65B of the Indian Evidence Act.

12] Learned Government Pleader as well as Mr. Ponda, learned

1 (2005) 11 SCC 600

2 (2014) 10 SCC 473

Counsel appearing on behalf of brother of the deceased to assist the prosecution, relied on the judgment of the Hon'ble Supreme Court consisting of the Bench of two Hon'ble Judges in the case of *Sonu vs. State of Haryana*¹. No doubt, Their Lordships have observed that the view taken in the case of *Anvar P.V.* (cited supra), if applied retrospectively, it would result in the reopening of a large number of criminal cases and adversely affect the administration of justice. However, Their Lordships observed that since the *Anvar's* case was decided by three Judges Bench, propriety demands that they refrain of declaring that the Judgment would be prospective in operation. Their Lordships left it open to be decided in an appropriate case by the three Judges Bench. As a matter of fact, in para 32 of the said Judgment, Their Lordships have observed thus :

“32.Criminal cases decided on the basis of electronic records adduced in evidence without certification have to be revisited as and when objections are taken by the Accused at the appellate stage.....”

13] As such, atleast, at this stage, it will not be possible for us to take into consideration evidence of CDRs. May be, if law, as laid down in *Anvar's* case (cited supra), is changed at the time when the present appeal comes up for hearing, the said CDRs could be taken into consideration.

1 AIR 2017 SC 3441

14] In that view of the matter, we are prima faice of the view that the Applicant has made out a good case for grant of bail. Apart from this, it has to be taken into consideration that the Applicant has undergone the sentence of nine years and seven months. Taking into consideration this aspect of the matter and particularly that, at no earlier occasion his application for bail was rejected on merit, we are inclined to grant the present application.

15] In the result, we pass the following order:-

ORDER

(i) Applicant be released on bail on his furnishing bail bond in the sum of Rs 25,000/- with one or more sureties in the like amount.

(ii) Applicant shall report to Malabar Hill Police Station between 8.00 A.M. & 10.00 A.M. every week.

(iii) Application is accordingly disposed of.

(B. P. COLABAWALLA, J.)

(B. R. GAVAI, J.)