

Anand

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

BAIL APPLICATION NO. 2548 OF 2017

Deepak Laxman Waghri .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. V. Tiwari i/b. Mr. Sanjay Singh, Advocate, for the Applicant
Mrs. J. S. Lohokare, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 14.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No. I-463 of 2016 registered with the Virar Police Station, for the alleged offences punishable under Sections 302, 376, 109 & 120B of the Indian Penal Code.

3. Learned counsel for the Applicant seeks bail on the ground of parity. He submits that similarly placed co-accused – Sohail Samad Shaikh has been enlarged on bail by this Court vide Order dated 26.09.2017 in B. A. No. 305 of 2017. He submits that the only evidence

against the Applicant is an extra judicial confession, which is a weak type of evidence and that there is no corroboration to the same.

4. Learned APP opposed the Application.

5. Perused the charge-sheet. Admittedly, the prosecution case rests on circumstantial evidence. According to the prosecution, the deceased had been to the house of the Applicant on 02.09.2016 at about 10.30 a. m. to meet co-accused – Sohail; that the Applicant asked her to wait and told her that he would call co-accused – Sohail; that the Applicant asked the deceased for sexual favour and when she refused, he tried to sexually assault her; that when deceased started shouting, the Applicant assaulted her with an axe on her head, neck and other parts of the body. There is an extra judicial confession made by the Applicant to his neighbours i. e. Shyam Mayekar, Vijay Madeshiya and Rohit Madeshiya, all residing in the same chawl. According to Shyam, Vijay & Rohit, they had seen the Applicant and co-accused – Sohail on 02.09.2016, at around 1.30 p. m. pacing up and down, outside the Applicant's room, suspiciously; that when they questioned the Applicant about the noise and screams coming from his room and asked him to open the door, the Applicant refused to open the door; that when

Vishwanath Gurav asked the Applicant to open the door which the Applicant did, they went into the room and saw that clothes were lying scattered in the room i. e. in the hall, pursuant to which, they left the room, after which, the Applicant locked the said room. The said three witnesses have further disclosed that at around 2.30 p. m., the Applicant and co-accused – Sohail came with the police, opened the room and took them to the kitchen, where the deceased was seen lying in a pool of blood. When the witnesses questioned the Applicant, the Applicant disclosed that the deceased was going around with Sohail; that as the Applicant's wife had gone to her parent's place for about 20 to 25 days, Sohail was residing with him and hence, the deceased was coming to meet Sohail. The Applicant is further alleged to have disclosed that on 02.09.2016 at about 10.30 a. m., the deceased had come to his house to meet Sohail; that Sohail was not at home; that he told the deceased that he would call Sohail and asked her to wait in the house; that the Applicant asked the deceased for sexual favour and when she refused, he tried to sexually assault her; that when the deceased started shouting, the Applicant assaulted her with an axe on her head, neck and other parts of the body. A perusal of the post mortem report shows that the deceased had sustained as many as 24 injuries. There can be no parity with co-accused – Sohail who has been enlarged on bail by this Court.

6. Considering the overwhelming material against the Applicant, this is not a fit case to enlarge the Applicant on bail. The Application stands rejected.

7. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this Application.

(REVATI MOHITE DERE, J.)