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

**CRIMINAL BAIL APPLICATION NO.1631 OF 2017
IN
CRIMINAL APPEAL NO.578 OF 2016**

Jitin Kuwaranji Dedia	..Applicant
vs.	
The State of Maharashtra	...Respondent

ALONGWITH

**CRIMINAL BAIL APPLICATION NO.1549 OF 2017
IN
CRIMINAL APPEAL NO.576 OF 2016**

Najim Kalam Khan	.	..Applicant
Versus		
The Sate of Maharashtra & Anr.		..Respondents

Dr.Yug Chaudhry alongwith Ms.Ragini Ahuja I/by Mr.Khan Abdul Wahab,
for the Applicant in APPA No.1631/2017 (Accused No.4).
Mr.Madan Gupta, for the Applicant in APPA No.1549/2017 (Accused No.1).
Mrs.Rohini Salian, Spl. PP alongwith Mrs.M.H. Mhatre, APP for
Respondent/State in both APPA.

**CORAM: B. R. GAVAI &
SARANG V. KOTWAL, JJ.**

DATE: 27th July, 2018

P.C.:-

1] These are applications for suspension of sentence and grant of bail during the pendency of the trial.

2] Heard Shri Chaudhry, learned counsel for the Applicants and Ms.Rohini Salian, Spl. P.P. for the State/Respondent.

3] Shri Chaudhary vehemently submits that the learned trial Judge has passed an order of conviction on the basis of no evidence. He submits that the prosecution has failed to prove a single incriminating circumstance against the Applicant who is accused No.4 and in any case failed to establish a chain of evidence which is so interconnected to each other that leads to no other conclusion than guilt of the accused.

4] Ms.Rohini Salian, learned SPP vehemently opposed the application. She submits that the present case is a very intricate case and the prosecution, on the basis of various circumstances has proved the guilt of the accused beyond reasonable doubt. According to her, the most incriminating circumstance against the preset Applicant would be that of his telephoning accused No.2 immediately before the incident and accused No.2 telephoning Accused No.1 who according to her is the assailant.

5] In view of the law laid down by the Apex Court in the case of **Niranjan Singh & Anr. vs. Prabhakar Rajaram Kharote & Ors.**¹, a detailed elaboration of evidence at this stage will have to be avoided.

6] We will, therefore, consider the case on the basis of evidence which is absolutely necessary for considering the present application.

7] The prosecution story in brief reads thus :

On the fateful day, at around 5.30 a.m. the deceased Bina Dedhia

1 (1980) 2 SCC 559

alongwith the present applicant/accused No.4 had gone for morning walk. When they were walking, two persons who had put mask on their face came there and one of them assaulted the deceased on her neck. The said person also threatened the applicant/accused No.4 and forced him to give his gold chain and cash of Rs.12,000/-. Thereafter, the applicant/accused No.4 was also assaulted by the said persons. Applicant/accused No.4, had immediately thereafter lodged the First Information Report.

8] It is the prosecution case that as a matter of fact, the applicant/accused No.4 with rest of the accused had hatched a conspiracy to kill his wife and make a farce that he was also assaulted in the same incident. The motive alleged is that of the illicit relations between applicant/accused No.4 and original accused No.5 who happens to be the sister-in-law of applicant/accused No.4.

9] It appears that the incriminating circumstances which were found to be proved against the present applicant by the learned trial Judge, are that there was telephonic conversation between applicant and accused No.2 immediately prior to the incident. Thereafter, there was a call between accused Nos.2 and 1. The other circumstance is that a photograph of the deceased with hand-writing on the back of the photograph was seized on a memorandum under Section 27 of the Indian Evidence Act, from the wallet of the accused No.1 on the date of his arrest.

10] The other circumstance is that prior to 3-4 days of the incident, accused Nos.2, 3 and 4 were seen talking to each other.

11] Insofar the first circumstance is concerned, the learned trial Judge

has discussed the evidence in paragraph nos.95 to 98. From the said evidence it appears that it is the case of the prosecution that one Ganesh D. Samal had given a sim card to his wife Gitanjali who is working in the grocery shop of Shyam Vijpal Veerji & Co. It is further prosecution case that the said Gitanjali had given the said sim card to Sureshsing Parmar -PW 31. It is further case of the prosecution that the said PW 31 had given the said sim card for making telephone calls to the applicant. However, it is to be noted that PW 31 has not supported the prosecution case and has turned hostile. As such, it cannot be said that the prosecution has proved beyond reasonable doubt that the said sim card having phone no. 9969820449 was used by the present applicant. The learned trial Judge has observed that the possibility of using the said sim card by the present applicant is strongly made out.

12] Insofar as other circumstance is concerned, there is no panchanama with regard to obtaining specimen hand-writing of the present applicant.

13] In so far as circumstance No.3 is concerned i.e. accused Nos.2, 3 and 4 having seen in the company of each other prior to 3-4 days of the incident, it is the specific case of the defence that all three accused are shop owners having their business in the same vicinity. In these circumstances the persons having shops adjacent to each other, talking to each other cannot be said to be an abnormal circumstance. In any case, on the basis of same evidence the learned Trial Judge has acquitted accused No.3.

14] We are of the view that the appellant has a good case on merits. In any case, it is to be noted that the applicant is behind the bars for 8 years

and 7 months. Taking into consideration huge pendency of appeals, there is remote possibility of present appeal being heard in the near future.

15] In view of the matter, we are inclined to allow the application. Hence, the order :

ORDER

1 The order of sentence insofar as accused No.4 is concerned, is suspended.

2 Accused No.4 is directed to be released on bail on furnishing bail bond in the sum of Rs.15,000/- with one or more sureties in the like amount.

(SARANG V. KOTWAL, J.)

(B. R. GAVAI, J.)