

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

BAIL APPLICATION NO.3018 OF 2017

Krishna Raghav Sapalinga
(At present lodged at Kalyan
Central Prison)

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Raghuwanshi i/b. Mr.A.M. Savagave, Advocate for the
Applicant.

Ms.A.A. Takalkar, APP for the Respondent – State.

Mr.S.D. Bhanage, MFC Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 30, 2018.

P.C. :

This is an application for bail in connection with C.R.No.I-766 of 2015, registered with Mahatma Phule Chowk Police Station, Kalyan, District-Thane, for the offences punishable under Sections 302, 364 and 201 read with 34 of Indian Penal Code ("IPC", for short). Applicant was arrested on 31st August, 2015.

2 The prosecution case is that the complaint was lodged by Umesh Ramchandra Antre on 13th August, 2015, stating that his wife Sangita was not present in the house. The said complaint was registered as missing complaint bearing No.169 of 2015. The inquiry proceeded. On 29th August, 2015, police informed the complainant that body of woman aged about 45 to 46 years is found in Kasara Valley and asked him to visit the said place for the purpose of identification. Complainant was shown body of unknown lady, which was in decomposed condition. On the basis of the clothes which were worn on the the body of the said lady, complainant identified the body as that of his wife. The complaint was registered on 29th August, 2015, against unknown persons. It was alleged that some unknown persons had abducted his wife, and, subsequently, committed her murder. Investigation proceeded. The applicant was, thereafter, arrested on 31st August, 2015. Subsequently, charge - sheet has been filed.

3 Applicant preferred applications for bail before Sessions Court, which were rejected on 12th July, 2016, and, 22nd August, 2017.

4 The prosecution case is that there was a dispute in relation to the property. The applicant was related to the wife of the complainant. It is alleged that the flat which was occupied by the applicant was in the name of the mother of the deceased. The applicant was interested in having the said property and that there were dispute between the applicant and the deceased. The deceased was a short tampered lady and she used to visit the said premises and there used to be quarrels. Statements of various persons were recorded during the course of investigation and charge - sheet has been filed.

5 Learned counsel for the applicant submitted that the identity of the body which was recovered by the police is under doubt. The description, which was provided in the missing complaint by the complainant refers to the clothes worn by his wife on the date and incident whereas description of clothes on recovered body differs. It is further submitted that the applicant is in custody for a period of about three years and there was no progress in the trial. The entire case of the prosecution is based on circumstantial evidence and the applicant cannot be kept further custody. There are no antecedents against the applicant. The co-accused has been granted bail. There is no recovery at the

instance of the applicant. There is no direct evidence. Prosecution is relying upon blood stains found in the car. It is submitted that the blood stains were allegedly noticed much after the period of its seizure.

6 Learned APP submitted that there is sufficient evidence to involve the applicant. He had motive to commit the crime. The statement of applicant's son shows the involvement of the applicant. According to him, on the date of the incident, the applicant has left the house and thereafter returned after gap of time. The wife of the complainant was missing from the very day. It is submitted that the blood stains were found in the car and the DNA report obtained on analysing blood of daughter matches with blood found in car. It is submitted that the evidence collected during the course of investigation shows the complicity of the applicant in the said crime. Initially missing complaint was filed by the complainant. Subsequently, body of unknown lady was recovered by the police and the applicant was called for identification. The dead body was allegedly identified only on the basis of the clothes which were worn by the deceased. However, description of the clothes mentioned in the missing complaint varies. It is also pertinent to note that the DNA Report, which

refers to the dead body which was recovered does not match. The prosecution, however, relied upon the blood stained cloths which were found in the car, which is allegedly used for commission of the crime. It is also the case of the prosecution that on the basis of certain features, the dead body which was recovered had been identified by the complainant, as his wife. The prosecution has heavily relied upon the statement of son of the applicant who has referred to certain circumstances in his statement. He had stated that the applicant and his son had gone to Dhaba for dinner and at that time the deceased had gone to the house of neighbour. Subsequently, it is found that the deceased was not found in the house and the articles lying in the house were found scattered. It is also the case of the prosecution that according to the said witness, applicant was not in the house on the same day and had returned subsequently. It is pertinent to note that the husband of the deceased had visited the house of the applicant and he made inquiries about his wife (deceased) with the applicant's son. However, he did not suspect the involvement of the applicant. Even, in the missing complaint, the complainant had not suspected that the applicant is involved in abduction of his wife. Even after the dead body of the deceased was recovered, the complainant has stated that some unknown persons had

abducted his wife, and, subsequently, she has been murdered. It is not clear as to how the prosecution has suspected the involvement of the applicant. In any case, there was no direct evidence to show the involvement of the applicant. The entire case of the prosecution is based on circumstantial evidence, as stated above. The applicant is in custody since last three years. Trial has not yet proceeded. Considering the aforesaid circumstances, bail can be granted to the applicant.

7 Hence, I pass the following order:

:: O R D E R ::

- (i) Bail Application No.3018 of 2017, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.I-766 of 2015, registered with Mahatma Phule Chowk Police Station, Kalyan, District-Thane, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall attend Mahatma Phule Chowk Police Station, Kalyan, District-Thane, every month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further order;
- (iv) Applicant shall not tamper the evidence and also attend the trial Court regularly during the date of hearing, unless exempted by the Court for some reasons;
- (v) Applicant shall not leave India without prior permission of the trial Court;
- (vi) Bail Application No.3018 of 2017, stands disposed of.

(PRAKASH D. NAIK, J.)