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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.904 OF 2018 AND
CRIMINAL APPLICATION NO.905 OF 2018
IN
CRIMINAL APPEAL NO.739 OF 2018

Arjun Shivaji Sutar
(at present in Kolhapur Jail) ...Applicant
vs.
The State of Maharashtra ...Respondent

Ms Divya Gupta I/b Mr.Nitin S. Satpute for the
applicant
Mr.J.P.Yagnik, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : FEBRUARY 26, 2019

P.C.:

1 Heard the learned counsel for the applicant.
The applicant has applied for grant of bail pending
the appeal. The applicant has been convicted for
the offence punishable under section 302 of the
Indian Penal Code (for short 'IPC').

2 The case is based on circumstantial evidence.
The allegation against the applicant is that he
committed a murder of one Smt.Rani who is his
mother. The allegation of the prosecution is that
illicit relationship between the applicant's mother
and Maruti Anna Sutar, the first informant is the
motive for the offence. Two major circumstances are
relied upon by the prosecution which are accepted by

the trial Court. The first is the recovery of blood stained clothes on the person of the applicant and the weapon of offence allegedly used by the applicant at his instance from his house. The second circumstance is that there are blood stains found on the alleged weapon of 'B' group.

3 We have perused the notes of evidence of P.W.No.1-Shankar Bajirao Bhosale, a Panch Witness to the alleged recovery at the instance of accused No.1. P.W.No.1 in his cross examination admitted that firstly the police entered the house of the applicant and thereafter, he along with accused entered. He admitted in the cross examination that the Police Officer informed him that the clothes and weapon were at a particular place. The applicant took out the same. According to the said witness, when he along with the accused and police visited the house of the applicant, it was open. The evidence of the said witness P.W.No.1 makes the alleged discovery at the instance of the applicant prima facie doubtful. The evidence of P.W.No.4 and other panch witness is contrary to the evidence of other witnesses even in terms of the date on which the clothes and weapon were allegedly discovered at the instances of the applicant.

4 Prima facie, the alleged discovery of the clothes on the person of the accused and the weapon used by him at the instance of the applicant becomes doubtful. As stated earlier, this is one of the

main circumstance pleaded by the prosecution as a part of the chain of circumstances.

5 Therefore, a case is made out for enlarging the applicant on bail on stringent conditions.

6 Accordingly we pass the following order:

- (I) The order of sentence imposed upon the applicant-Arjun Shivaji Sutar under the impugned Judgment and Order dated 10th May 2018 in Sessions Case No.28 of 2017 shall stand suspended till the final hearing of the appeal and the applicant shall be enlarged on bail in the sum of Rs.25,000/- (twenty five thousand only) with one or two local sureties in the like amount;
- (II) Bail is granted subject to condition that the applicant will furnish a detailed address of his place of residence where he proposes to stay after he is enlarged on bail and his contact telephone number to the Jail Superintendent;
- (III) Bail is granted subject to condition that the applicant will report to the learned Trial Judge on first Monday of January and July of every calendar year at 11.00 a.m till the disposal of the appeal. In the event, Monday is a Court holiday, he shall report to the Trial Judge on immediately next Court working day;
- (IV) In the event, the learned Trial Judge finds that the applicant has committed any breach of the conditions, he will forthwith submit a report

to that effect to the Registrar (Judicial-I) who will place the same before the concerned Bench for necessary orders;

(V) Applications are disposed of on above terms.

(A.S.GADKARI,J.)

(A.S.OKA,J.)