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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 709 OF 2018**

Saraiya Ibrahim Mukadam

.....Applicant

V/s.

Tanvir Ali Mukadam and another

.....Respondents

Mr. Prashant V. Malik a/w Mr. Vaibhav R. Shah a/w Mr. Jitesh Goyal a/w Mr. Irfan Ansari advocate for the applicant
Ms. S. S. Kaushik APP for the State

CORAM : NITIN W. SAMBRE, J.**DATE : JANUARY 21, 2019.****P.C.**

Respondent-accused after his arrest came to be charge-sheeted in Crime no. 31 of 2018 registered with Deorukh Police Station for offence punishable under sections 302, 364, 341, 342, 326, 392, 143, 147, 148, 149, 323 of the Indian Penal Code.

2 Prosecution case is respondent no. 1 along with other accused persons have abducted the complainant Ipsan, assaulted him,

poured hot water on his body and removed valuables from his custody.

3 In the aforesaid background, present respondent no. 1 after his arrest approached the learned Sessions Court with prayer for grant of regular bail. The said request came to be allowed by the learned Sessions Judge, Ratnagiri vide order dated 08/08/2018 passed in Criminal Bail Application no. 66 of 2018. As such, this application for cancellation of bail.

4 The learned counsel for the applicant submits that the learned Sessions Judge was not justified in ordering the release of respondent no. 1 co-accused, particularly when the said respondent was charged with offence under section 149 of the Indian Penal Code. According to him, present respondent has executed the crime alongwith co-accused with common intention and there is active participation. He would try to rely upon the statement of eye witnesses recorded during investigation.

5 The learned APP supports the claim.

6 Considered rival submissions.

7 Perusal of the F.I.R. depicts that no specific role is attributed to respondent no. 1 of taking active part in the commission of crime in question to the extent of causing burn injuries which appears to be cause of death as could be inferred from Post Mortem Report.

8 The learned Sessions Court considered the statement of eye witnesses Ruksana, Sherbanu, Asma and Suraiya who have not attributed any specific role in the commission of crime in question which appears to be basis for ordering release of respondent no. 1.

9 The view expressed by the learned Sessions Judge appears to be a possible view and cannot be by any stretch of imagination could be termed as a shocking one.

10 Upon perusal of the material on record what could be inferred is the role attributed to the present respondent no. 1 does not

warrant his further detention in the crime in question. That being so, I hardly notice any merit in the application which warrants cancellation.

11 Application as such fails, stands rejected.

12 It is made clear that the observations made herein above are *prima facie* in nature.

[NITIN W. SAMBRE, J.]