IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1184 OF 2018

Ish Narayan Dalsiar Yadav @
Baccha Yadav ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Jeyarajan Muthiahs for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 24th JULY 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 684 of 2014 registered with the Wadala T.T. Police Station, Mumbai, for the alleged offences punishable under Sections 302 and 201 of the Indian Penal Code (`IPC'). The investigation was thereafter transferred to DCB CID and was renumbered as C.R. No. 8 of 2016. In addition to the aforesaid sections, Sections 377, 363, 34 and 120B of the IPC were also added along with Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act.

3 Learned counsel for the applicant seeks bail on the ground of parity. He submits that identically placed co-accused-Mehmoodali Shafatali Sayyed has been enlarged on bail by this Court (Coram: Prakash D. Naik, J.) vide order dated 19th July 2017. He submits that the applicant needs to be enlarged on bail to defend his case effectively. He submits that in the present case, the credibility of all the witnesses is questionable. He further submits that this Court has enlarged co-accused on bail, essentially as the identification parade was held belatedly.

4 Learned A.P.P opposes the application. Learned A.P.P has filed an affidavit of PI Sandesh S. Revale, DCB CID, Unit-IV, Antop Hill, Mumbai. She submits that there are several circumstances which point to the complicity of the applicant and that there is no parity with co-accused-Mehmoodali Shafatali Sayyed.

5 Perused the papers. On 14th October 2015, a missing complaint was lodged by Nafees Khan with the Wadala Police Station, stating that his son aged 6 years was missing from 13th October 2015 and that some unknown persons have kidnapped him. Pursuant thereto, C.R. No. 212 of

2015 came to be registered with the Wadala Police Station for the alleged offence punishable under Section 363 of the IPC. On 23rd December 2015, one Jagdish More, an Electrician was returning from work, when he found a body in a totally decomposed condition. Near the said body, there was a beer bottle, a piece of blade and a piece of tile stained with blood. Pursuant thereto, C.R. No. 684 of 2015 came to be registered on 24th December 2015 for the alleged offences punishable under Sections 302 and 201 of the IPC, as against unknown persons.

6 During the course of investigation, it was revealed that the dead body was that of deceased, aged 6 years. The said body was identified by the complainant on the basis of the clothes which were on the person of the deceased, when he went missing. The investigation was subsequently transferred to DCB CID, Unit IV for further investigation on 15th January 2016. During the course of investigation, statements of Pappu Singh and Sahjad Siddiqui were recorded, which clearly show that the deceased was last seen in the company of the present applicant. Witness Pappu Singh has identified the applicant in the identification parade. The statements of Ramzan Shaikh and Chandan Banja also show that the

applicant had come to Sherry Wine Shop and had purchased a bottle of Kingfisher Beer during Navratri festival. The bottle which was found near the body was bearing the same batch number, which was purchased from the wine shop i.e. Batch No. 106. The statement of Abdul Mohit Shah shows that he had seen the applicant along with co-accused on the date of the incident. The present applicant had also shown the place of incident/spot, where the dead body was found. The DNA report and the FSL report shows that the complainant and his wife were the biological parents of the child, whose dead body was found. There is no parity with co-accused-Mehmoodali Shafatali Sayyed.

7 Considering the material on record and the seriousness of the offence, the application is rejected.

8 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 order.

REVATI MOHITE DERE, J.