

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

BAIL APPLICATION NO.1592 OF 2019

Santosh Chhotelal Rai

.. Applicant

Vs.

State of Maharashtra

.. Respondent

.....

Mr.Ashok Saraogi a/w. Mr.Aakash Singh, Advocate for the Applicant.

Mr.A.R. Kapadnis, APP for Respondent – State.

API Vishnu Avhad, Narpoli Police Station, Bhiwandi, District – Thane.

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**CORAM : PRAKASH D. NAIK, J.
(CHAMBER MATTER)**

DATED : SEPTEMBER 23, 2019.

P.C. :

The applicant is seeking bail in connection with C.R.No.I-60 of 2016, registered with Narpoli Police Station, Bhiwandi, District – Thane for the offences punishable under Section 302, 201, 120(B), 34 of Indian Penal Code and Section 3(1),3(2), 3(3) and 14 of the Foreign Citizen Act, 1946 as well as under Sections 1 and 2 of the Passport Act, 1967.

2 This is a second application for bail. Vide order dated 27th August, 2018, the previous Application viz. Bail Application

No.1840 of 2018 was withdrawn with liberty to prefer fresh application for bail in the event trial is not concluded within nine months from the date of the said order.

3 The period of nine months was over in May 2019. There is no progress in trial. The charge is framed on 2nd January, 2019. However, no evidence is recorded. Even the summons' are not issued to the witnesses. Applicant was arrested on 7th April, 2016 and apparently he is in custody for a period of 3 and ½ years.

4 The prosecution case is that there was illicit relationship between the applicant and the wife of the deceased. Both had conspired to kill the deceased. The alleged incident had occurred on 2nd February, 2016. Prosecution is relying on the statement of auto-rickshaw driver and the manager of bar who had allegedly last seen the deceased and with the applicant. The prosecution is also relying upon the CDR.

5 Learned APP contended that there is circumstantial evidence against the applicant. Motive has been established. Since there is evidence of last seen together and CDR.

6 The alleged incident took place on 2nd February, 2016. The statement of rickshaw driver was recorded on 11th April, 2016. Whereas the statement of the other witness i.e. Sharad Pujari was recorded on 20th May, 2016. Dead body of the victim was recovered on 3rd February, 2016 at Modi Compound, Bhiwandi Nasik highway. The rope was recovered from the place of incident from an open place on 9th April, 2016. The prosecution could not point out that the calls were between applicant and wife of deceased. The accused no.2 i.e. wife of the deceased is absconding. Prosecution could not point out clear evidence with regards to the tower location of the applicant at the place of incident through CDR.

7 The applicant is in custody for the period of about 3 and ½ years, liberty was granted to the applicant to prefer fresh application if trial is not concluded within a period of 9 months. Except framing of charge, there is no progress in trial. There is no eye witness and case is based on circumstantial evidence. It is not clear as to when the trial would be concluded. Taking into consideration the aforesaid circumstances, bail can be granted to the applicant on certain conditions:

:: ORDER ::

- (i) Bail Application No.1592 of 2019, is allowed;
- (ii) Applicant is directed to be released on bail in connection with C.R.No.I-60 of 2016, registered with Narpoli Police Station, Bhiwandi, District-Thane, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more local sureties in the like amount;
- (iii) Applicant shall furnish his permanent place of residence to the Investigating Officer after he is released on bail;
- (iv) Applicant shall report Narpoli Police Station, Bhiwandi, District-Thane, once in a fortnight on Saturday between 11:00 a.m. to 1:00 p.m., till further orders;
- (v) Applicant shall not leave Maharashtra State without permission of the trial Court;

(vi) The observations made in this order are only for considering the application for bail and the trial Court should not be influenced by the same at the time of trial;

(vii) Bail Application stands disposed of.

(PRAKASH D. NAIK, J.)