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

**ANTICIPATORY BAIL APPLICATION NO. 2194 OF 2018**

1. Vaibhav Yashwant Thakur .....Applicants  
2. Yashwant Atmarak Thakur

V/s.

The State of Maharashtra .....Respondent

Mr. Ashok M. Mundargi Senior Advocate i/b Mr. Chetan Nagare  
advocate for the applicants  
Smt. J. S. Lohokare APP for the State  
Mr. Mahendra B. More, PI, Kalamboli Police Station

**CORAM : NITIN W. SAMBRE, J.**

**DATE : JANUARY 24, 2019.**

**P.C.**

In Crime No. I-178/2010 registered with Kalamboli Police Station, for offence punishable under Sections 302, r/w 34 of the Indian Penal Code, applicants are seeking pre-arrest bail.

2 Complainant Harishchandra was blessed with one son and daughter by name Shradhant and Snehal. Snehal was married to Atul an accused in the crime in question. Atul is son of applicant no. 2 Yashwant and applicant no. 1 Vaibhav is real brother of Atul.

Harish in the complaint alleged that after marriage on 08/05/2014 of his daughter Snehal with Atul, she was subjected to cruelty and there was demand of dowry. Since the demand of dowry was not fulfilled, she was murdered by the family members viz. Yashwant, his wife Jayashree, husband of the victim-Atul, Vaibhav, brother of Atul, Supriya wife of Vaibhav.

3 The learned senior counsel Shri. Mundargi would urge that so far as both applicants are concerned, they have come out with a plea of *alibi* as the incident in question claimed to have occurred on 20/09/2018 in between 10.30 hours to 19.30 hours. According to him, both applicants were not present in the house and as such, they cannot be blamed for or roped in, in the crime in question for custodial interrogation.

4 *Per contra* the learned APP submits that so far as applicant no. 1 Vaibhav is concerned, there is no material received in the investigation to infer that he was not present in the spot of the incident when the murder took place.

5     Upon detailed investigation by the Investigating Officer, the learned APP reports that plea of *alibi* raised by applicant no. 2 Yashwant appears to be having some substance, however, she submits that in absence of exact time of offence, the benefit cannot be passed on to the applicant no. 2. As such, rejection is sought.

6     So far as applicant no. 1 Vaibhav is concerned, there is hardly any material on record to infer, particularly in the backdrop of date of marriage being 08/05/2014 that the said applicant is not involved in the crime in question having regard to the provisions of Section 113A and 113B of the Evidence Act.

7     So far as plea of *alibi* raised by applicant no. 2 is concerned, investigation revealed that the said applicant left for Ahmednagar in the morning on the said date and returned by evening.

8     The victim has suffered a single blow on head resulting into fracture and the cause of death cited in the post mortem report speaks of ligature mark around neck with head injury. The final

opinion is kept reserved awaiting outcome of the Chemical Analyser Report.

9 The fact that applicant no. 2 was not present could be ascertained from the investigation carried out and also submission made by the learned APP on instructions. Post moretem report speaks of beginning of the procedure between 4.30 p.m. to 5.30 p.m. on 21/09/2018 i.e. on the next date of the incident in question. The doctor's opinion as regards timing of the death is concerned, same is cited to be between 18 to 36 hours before the post mortem. If same is co-related, the theory put forth by applicant no. 2 of alibi needs to be accepted at this point of time. Though, prosecution has invoked provisions of 120B of the Indian Penal Code in the offence in question, perusal of F.I.R. and other material hardly convinces this Court to draw an inference *qua* satisfaction of the ingredients to that effect from the statement of the complaint and other evidence. Apart from above, his travel details, statement of witnesses who were accompanying him, CCTV footage from the restaurant at Shirdi, in voluminous terms justify his plea of *alibi* raised by applicant No.2.

10 That being so, application at the behest of applicant no. 2 needs to be allowed. Hence, following order:

*(A) In the event of arrest of applicant no. 2 Yashwant Thakur in Crime No. I-178/2010 registered with Kalamboli Police Station, applicant no. 2 be released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.*

*(B) Applicant no. 2 shall not influence the witnesses or tamper with evidence.*

*(C) Till filing of the charge-sheet, applicant no. 2 shall remain outside the jurisdiction of the Kalamboli Police Station.*

*(D) Needless to observe that during investigation, if evidence contrary to the above observations qua plea of alibi is noticed, prosecution will be at liberty to move directly this Court for cancellation of bail.*

11 Needless to observe that application at the behest of applicant no. 1 Vaibhav Thakur stands rejected.

**[NITIN W. SAMBRE, J.]**