

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

CRIMINAL BAIL APPLICATION NO. 2999 OF 2018

Kanhaiya Surendra Gupta	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

Mr.R.C. Mishra and Mr.Prabhakar Tripathi for Applicant.
Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 10th April 2019.

P.C. :

1] This is an application under Section 439 of the Code of Criminal Procedure for bail in C.R. No. I-221 of 2018 dated 22/03/2018 registered with Kashimira Police Station, District Thane, for the offence punishable under Section 302, 201 of the Indian Penal Code.

2] Heard the learned counsel for the applicant and the learned APP for the State. Perused the chargesheet.

3] The prosecution case in brief is that, the son of the applicant used to fell ill intermittently. The deceased Ramesh Chanara @ Chamar

@ Bharti was having acquaintance with the applicant. The deceased assured the applicant that he would perform certain magic, due to which his son would be cured immediately. The deceased thereafter won over the confidence of the applicant. On 28th February 2016 the deceased attended the house of the applicant and under the pretext of performing black-magic, he took undue advantage of the situation and established physical relations with the wife of the applicant. That, thereafter the behaviour of the wife of the applicant was changed. It is alleged that on 9th March 2018 in the night the applicant called deceased at Akurli road chowk at Kandivali and from an auto-rickshaw took him to an isolated place and committed his murder by strangulation. It is alleged that, with a view to screen the evidence, the applicant threw the body of the deceased in the shrubs near a gutter/nalla flowing therefrom.

4] The said incident has taken place in the intervening night of 9th March 2018 and 10th March 2018. After finding of the dead-body on 12th March 2018 at about 9.30 am, the police initially lodged Accidental Death Report (ADR). During the course of the inquiry of the said ADR, it was revealed that the murder of the deceased has been committed by the applicant and therefore, the present crime is registered on 22nd

March 2018. The applicant is arrested on 22nd March 2018 and after completion of investigation, police have submitted the chargesheet.

5] The prosecution case is based on circumstantial evidence. *Prima-facie*, it appears that the prosecution has propounded two main circumstances, namely, (i) Last seen together and (ii) Extra judicial confession given by the applicant to his brother Prabhu Surendra Gupta.

6] The said witness i.e. Prabhu Gupta has stated that, on 9th March 2018 at about 10.30 pm he saw that the applicant and deceased discussing the issue pertaining to removal of adverse effect of black-magic from his wife and thereafter, both of them proceeded in an auto-rickshaw. The dead body of the deceased was found on 12th March 2018 at about 9.30 am. *Prima-facie*, it appears that there is substantial gap between the applicant last seen in the company of the deceased and finding of the dead body.

7] As far as the extra judicial confession given by the applicant to his real brother is concerned, the statement of said witness i.e. Prabhu Gupta is recorded on 24th March 2018 i.e. after the arrest of the applicant and according to this Court, the said extra judicial confession, *prima-facie*, does not inspire confidence in its mind.

8] It is submitted that there are no antecedents at the discredit of the applicant. The applicant is in jail since 22nd March 2018 and the police have already completed investigation.

9] In view thereof, the applicant can be released on bail.

Hence, the following order :-

- (i) The Applicant shall be released on bail in C.R. No. I-221 of 2018 dated 22/03/2018 registered with Kashimira Police Station, District Thane, on his furnishing P.R. bond of Rs.15,000/- with one or two separate local sureties in the like amount.
- (ii) After his release from Jail, the applicant shall attend all the dates before the trial Court, unless exempted by the concerned Court.
- (iii) In case of two consecutive defaults, the Prosecution is at liberty to file an application for cancellation of bail.
- (iv) Applicant shall not tamper with the evidence and/or interfere with the process of investigation.
- (v) Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]