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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3174 OF 2018

Appa Pandurang Pawar

..Applicant.

V/s.

State of Maharashtra

..Respondent.

Mr.Milind Deshmukh for the applicant.

Mr.M.G.Patil, APP for the respondent-State.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 5, 2019

P.C.:-

Heard learned counsel for the applicant and learned APP for the State.

2. In crime No.350/2014 for offence punishable under section 302 read with 34 of the Indian Penal Code registered with Indapur police station, District Pune, the applicant is seeking regular bail.

3. The applicant came to be arrested on February 28, 2018.

4. The prosecution has shown the present applicant as an absconding accused and charge-sheeted accused No.5, who came to be acquitted *vide* judgment dated November 19, 2015.

5. The allegations against the present applicant are, he along with other co-accused murdered one Shetkarya Tulsiram Bhosale. The motive behind the murder was non settlement of the earlier crime in which the applicant claimed to have murdered his sister Gangubai Eknath Kale.

6. In the aforesaid background, Mr.Deshmukh, learned counsel for the applicant submits that since co-accused Kumar is already acquitted on merits, the said evidence needs to be considered in favour of the applicant for his release on bail.

7. *Per contra*, learned APP submits that the applicant remained absconding for more than four years and there are criminal antecedents against the applicant.

8. Having considered the submissions, what is noticed is, under section 27 of the Evidence Act, memorandum is drawn pursuant to the discovery of the body of deceased at the behest of the applicant. No convincing explanation is coming forward to obliterate the said evidence on record from the prosecution side.

Apart from above, there are criminal antecedents and the applicant remained absconding for almost more than four years.

9. Just because accused No.5 in this very crime is acquitted that *ipso facto* will not entitle the applicant to claim relief particularly when the set of evidence available against the applicant appears to be on a higher pedestal than the acquitted accused. That being so, the application is rejected.

(NITIN W. SAMBRE, J.)