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

CRIMINAL BAIL APPLICATION NO.3236 OF 2018

Nilesh Bhaurao Khobragade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Ashok Mundargi, Senior Counsel a/w Mr.Vipin Kamdi and
Mr.Pradhuman Chavhan i/b Mr.Sushrut Jadhwar, for the Applicant.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 9th OCTOBER, 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.I-236 of 2017 registered with the Shivaji Nagar Police Station, for the alleged offences punishable under Sections 302, 376(2)(g) and 201 of the Indian Penal Code.
3. Learned Senior Counsel for the applicant submits that the allegations against the applicant are false and baseless. He submits that there is no material to connect the applicant with the alleged offences. According to the learned senior counsel, it is the applicant who on learning that the co-accused had sexually assaulted and killed the deceased had

himself taken the co-accused – Nikhilesh and Akshay to the Ratnagiri Police Station and lodged an FIR. Learned Senior Counsel for the applicant relied on page 79 of the application i.e. the FIR lodged with the Ratnagiri Police Station as against the co-accused – Nikhilesh and Akshay for the alleged offences punishable under Sections 302, 376(2)(g), 201 and 34 of the Indian Penal Code. Learned Senior Counsel for the applicant submits that the applicant does not dispute the fact, that on their way from Nagpur to Mumbai, they picked up Nikhilesh's friend i.e. the deceased in Pune, that they went to Ambernath, to co-accused – Akshay's flat, where they had dinner. He, however, states that early in the morning, the applicant went to smoke a cigarette and as such does not know what transpired thereafter. He submits that the applicant had no knowledge that the co-accused had dumped the dead body of the deceased in a bag, which was purchased from his ATM Card, by co-accused – Akshay. He submits that the applicant realized that the co-accused had killed the deceased and dumped her dead body in the suit case, only when they confessed to him on their way back from Goa to Mumbai. According to the learned senior counsel for the applicant, the accused had disclosed to the applicant that on 4th September, 2017, when he had gone out for purchasing a cigarette that the deceased had left. He further submits that the DNA report also does not throw any light on the complicity of the applicant in the alleged offences.

4. Learned APP opposed the application. She submits that the statement of one Amrut Gill, shows that the applicant had gone in the morning of 4th September, 2017, for purchasing a cigarette and the statement of the watchman, who had seen all the accused including the applicant and the deceased, when they came to Ambernath from Pune in the early hours of 4th September, 2017. She submits that the applicant had used his ATM card to purchase a bag in which the deceased dead body was dumped. She further submits that the applicant had called a lawyer, pursuant to which, he lodged an FIR with the Ratnagiri Police Station.

5. Perused the papers. The prosecution case rests on circumstantial evidence. According to the prosecution, co-accused – Nikhilesh and the applicant were good friends as they both hailed from Nagpur. The deceased was a friend of co-accused – Nikhilesh. It appears that the applicant was to come for a conference to Mumbai, which was from 6th to 8th September, 2017 at Goregaon. It appears that the applicant had disclosed to co-accused – Nikhilesh that he was going to Mumbai for the said conference, pursuant to which, co-accused – Nikhilesh also volunteered to accompany him. Pursuant thereto, the applicant and co-accused Nikhilesh left Nagpur on 3rd September, 2017. On the way, co-accused – Nikhilesh received a phone call from his friend (deceased),

pursuant to which, Nikhilesh disclosed to the applicant that they would go via Pune as his friend also wanted to come to Mumbai. Accordingly, the applicant and Nikhilesh reached Pune at about 9.30 to 10.00 p.m on 3rd September, 2017. From Pune, the applicant, Nikhilesh and the victim girl (deceased) reached Ambernath on 4th September, 2017 at about 3 to 4.00 a.m. It appears that the co-accused – Nikhilesh on the way to Ambernath called his friend – Akshay (co-accused) and asked him to arrange for food. After reaching Ambernath, they all went to Akshay's flat and consumed alcohol and had food. It is alleged by the prosecution, that thereafter the accused sexually assaulted the deceased and thereafter killed her. It appears that on 4th September, 2017, all the accused left for Goa. It appears that on their way to Goa, the dead body of the deceased was thrown. When they reached Goa, co-accused – Nikhilesh started receiving calls, asking him about the whereabouts of the victim girl (deceased), pursuant to which, they decided to return to Mumbai. According to the learned senior counsel for the applicant, the applicant realized about the sexual assault on the deceased and that she was killed thereafter, only on the way back from Goa to Mumbai. It appears that on learning of the said incident, the applicant lodged an FIR with the Ratnagiri Police Station on 6th September, 2017, as against co-accused – Nikhilesh and Akshay, alleging offences punishable under Sections 302, 376(2)(g), 201 and 34 of the Indian Penal Code. As far

as the statements of the watchman, who had seen all enter the flat on 4th September, 2017, and Amrut Gill, from whom the applicant purchased cigarettes are concerned, the same cannot be *prima facie*, said to be incriminating, as it is not the case of the applicant that he was not present on the day of the incident. It is the case of the applicant, that the deceased was sexually assaulted and murdered, when he had gone out to purchase cigarettes. According to the learned senior counsel for the applicant, when the applicant returned the co-accused told him, that the girl had left. Amrut Gill's statement shows that the applicant had purchased cigarettes from him. As far as the call made by the applicant, to the Advocate is concerned, the prosecution has not recorded the statement of the said Advocate but has only annexed the letter sent by the Advocate to the Investigating Officer in the Supplementary Charge-sheet. The said letter also *prima facie*, does not show the complicity of the applicant. The DNA report also does not show the complicity of the applicant in the alleged offences. It *prima facie*, appears that the applicant lodged the FIR, on learning the acts of the co-accused, by going to the nearest police station i.e. Ratnagiri. The applicant has no antecedents. Investigation is complete and charge-sheet is filed.

6. Considering the role alleged to have been played by the applicant, the application is allowed and the applicant is enlarged on bail

on the following terms and conditions:-

ORDER

- i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;
- ii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;
- iii) The Applicant before his release, shall deposit his passport, if any, with the concerned Court;
- iv) The Applicant shall not leave the country, without the permission of the trial Court;
- v) The Applicant shall not tamper with the evidence or attempt to influence/contact the witnesses or any person concerned with the case;
- vi) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial

Court;

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

viii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

7. The Application is allowed and disposed of in above terms.

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.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.