

Anand

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

BAIL APPLICATION NO. 3385 OF 2018

Bhagwati alias Pattu Satydev Gupta .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Rajkumar Yadav, Advocate, for the Applicant
Mrs. P. P. Shinde, APP, for the Respondent – State
Mr. V. L. Kadam, API, Kalwa Police Station, Thane present

CORAM : REVATI MOHITE DERE, J.

DATE : 01.03.2019

(CHAMBER MATTER)

P.C.

. Heard learned counsel for the parties.

2. The First Bail Application was dismissed as withdrawn
vide Order dated 05.03.2018. This is the Second Bail Application.

3. Learned counsel for the Applicant submits that after
the Order dated 05.03.2018 dismissing the Applicant's First Bail
Application was withdrawn, there has been no progress in the

trial of the Applicant and as such, the same would be a change of circumstance warranting entertaining of the Second Bail Application. He submits that the Applicant has two children from the earlier marriage and his mother and children are dependent on him. He submits that the prosecution case rests entirely on circumstantial evidence and that the circumstances are not sufficient to disclose the complicity of the Applicant.

4. Learned APP opposes the Application. She submits that there is no change of circumstance after 05.03.2018 i. e. after rejection of the Applicant's First Bail Application, warranting interference in the present Application.

5. By this Second Bail Application, the Applicant seeks his enlargement on bail in connection with C. R. No. I-39 of 2017 registered with the Kalwa Police Station, Thane for the alleged offence punishable under Section 302 of the Indian Penal Code. No doubt, the prosecution case rests entirely on circumstantial evidence, however, prima facie, the circumstances on record point to the Applicant's complicity in the said case. It is pertinent to note

that the complaint has been lodged by the landlord, where the Applicant and the deceased were staying. The Complainant had seen the Applicant and the deceased together, just before the incident. There are other witnesses whose statements have been recorded under Section 164 of the Code of Criminal Procedure, who have seen the quarrel which ensued between the Applicant and the deceased, prior to the incident. There is an extra judicial confession made by the Applicant to one of the witnesses, whose statement is also recorded under Section 164 of the Code of Criminal Procedure. It is the prosecution case that the Applicant after the quarrel with his wife, killed her and and locked the door of the house from outside and escaped. During the course of investigation, the key of the room which was locked was found to be in the Applicant's possession. As far as reliance placed on the Judgments in *(2000)9 Supreme Court Cases 443*, reported in *Vivek Kumar Vs. State of U. P.* and *2003 ALL MR (Cri) 1002*, reported in *Tabrez Khan s/o Raisuddin Khan Vs. State of Maharashtra* are concerned, the same would not apply to the facts of the present case for releasing the Applicant on bail, merely because he has undergone two years in custody, de hors the facts.

The bail granted to the accused in both the aforesaid cases was on the facts of those cases. Having regard to material on record, which prima facie shows the complicity of the Applicant, this is not a fit case to enlarge the Applicant on bail. Hence, the Application stands rejected.

6. However, the trial of the Applicant is expedited. The learned Sessions Judge shall make an endeavour to dispose of the case as expeditiously as possible and in any event, within a period of 12 months.

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

(REVATI MOHITE DERE, J.)