

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

***CRIMINAL INTERIM APPLICATION NO.1015 OF 2020
IN
CRIMINAL APPEAL NO.1045 OF 2018***

Mukesh Sukarya Bhandari

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Amit Mane i/b Mr. Balwant V. Salunkhe, for the Applicant.

Ms. M. M. Deshmukh, A.P.P for the Respondent – State.

***CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.***

DATE : 28th JULY 2022

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant vide Judgment and Order dated 24th July 2018, passed by learned District Judge – 4 and Additional Sessions

Judge, Thane, in Sessions Case No. 473 of 2015, has been convicted for the offences punishable under Sections 302 and 201 of the Indian Penal Code ('I.P.C'). For the offence punishable under Section 302 of the I.P.C, the applicant has been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.50,000/-, in default, to undergo simple imprisonment for six months. Separate sentence has been imposed for the offence punishable under Section 201 of the I.P.C. Both the aforesaid sentences were directed to run concurrently.

4. Perused the papers with the assistance of the learned counsel for the parties. The prosecution case rests entirely on circumstantial evidence, in particular the evidence of last-seen and motive. With respect to the last-seen and motive, the prosecution has examined PW4 – Kalpana Mhatre, mother of the deceased and PW2 – Sanika Mhatre. As far as PW4 – Kalpana Mhatre is concerned, she has not actually witnessed the applicant in the company of the deceased, however, according to her, she learnt on the phone, that the applicant was with the deceased. A perusal of her evidence shows that

there are several material omissions in her evidence which have come up in the cross-examination with respect to the calls made by her, both to her daughter – Amisha and the applicant. Infact, according to PW4 – Kalpana, after her daughter – Amisha (deceased) went missing, the applicant was present throughout in the search of Amisha. Thus, *prima facie*, her evidence does not inspire confidence with respect to last-seen. As far as the evidence of PW2 – Sanika is concerned, she has stated that she had seen the applicant, Amisha (deceased) and Pankaj Mhatre in front of a bus-stop on 8th June 2015 at about 8:00 p.m., when she had gone to the said bus-stop, pursuant to the call made by Amisha, asking her to give her Rs.200/-. PW2 – Sanika has stated that Pankaj and Amisha got into the bus and that the applicant was asking Amisha not to get in the bus and that he would take her in his vehicle. She has further stated that Amisha and Pankaj proceeded in the said bus towards Kalyan Station and that the applicant followed the said bus in his Mahindra Jeep. PW2 – Sanika has stated that when she returned home, she narrated the incident to her parents and learnt from her mother that there was a quarrel between Amisha and her

father and that Amisha was insisting that the applicant should take her home, however, the applicant was not ready. She has further deposed that at about 10:30 p.m. her mother received a call from Amisha, who told her that the applicant was going to pick her up at Kalyan Station and that they were both returning home; that after some time she and her mother contacted the applicant on his mobile and that the applicant and Amisha were together in the jeep and were proceeding to their house, pursuant to which, she slept; that on 9th June 2015 at about 2:00 a.m. her mother woke her up as Amisha had not returned home; that her mother told her that the applicant had called her and told her that Amisha had got down from his vehicle, as she was angry and was returning home in an auto-rickshaw and asked her mother to see for Amisha below the building. Learned counsel for the applicant submits that although the prosecution is trying to show the location of the applicant at the spot where the dead body of Amisha was found, however, the prosecution has not shown that the other calls made on the said mobile, were that of the deceased – Amisha or of PW2 – Sanika or that of PW4 – Kalpana. The applicant

is in custody since June 2015. The appeal is of the year 2018. There are appeals which are pending prior to 2018, for final hearing in the category of appeals, where the accused are in jail.

5. Considering the overall evidence *qua* the applicant, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions:-

ORDER

i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

ii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

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iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of

residence or mobile details, if any, from time to time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.