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

**INTERIM APPLICATION NO.1823 OF 2022
IN
CRIMINAL APPEAL NO.609 OF 2022**

Babasaheb Gautam Vakale
Versus

..Applicant/Appellant

The State of Maharashtra

..Respondent

Adv. Shilpa Talhar for the Applicant/Appellant.
Smt. M. M. Deshmukh, APP for the Respondent-State.

**CORAM : NITIN W. SAMBRE &
S. M. MODAK, JJ**

DATED : 9th JANUARY, 2023

P.C.:

1. Vide Exhibit 16, appellant was charge-sheeted for the offence punishable u/s 302, 201, 363, 109, 120-B r/w. Section 34 of Indian Penal Code.
2. The Trial Court convicted the appellant for an offence punishable u/s. 302 relying on the circumstantial evidence. The Deceased Monu, 3 ½ years child died homicidal death.
3. The conviction of the appellant is based on last seen theory which is based on the testimony of a minor witness. Apart from above, the prosecution story rests on the genesis of contract killing.

4. Since the prosecution has failed to establish the very case u/s 120-B i.e. the accused having received amount of Rs.15,00,000/- as has been alleged for killing the minor Monu, both the accused are acquitted for the offence punishable u/s 120-B.

5. Since the case of the prosecution is based on the circumstantial evidence, the testimony of the minor i.e. Sonali who is examined at Exhibit 29 in categorical terms speaks of presence of other family members in the house of the appellant. As such, it cannot be said that even if the deceased was seen lastly in the company of the appellant, the other family members who are residing adjacent to the house of the complainant which consist of chawl of 10 rooms will not notice the very fact of the appellant/accused kidnapping the deceased child. Apart from above, the prosecution has failed to establish receipt of amount of Rs.15,00,000/- i.e. contract money.

6. The testimony of P.W. No 4-Akshay who is examined at Exhibit-31 working as housekeeper in the Ashram and P.W. No. 5-Ratankumar who is examined at Exhibit-37 working in the very same Ashram though speaks of presence of the applicant while driving Echo vehicle, they have specifically stated that the

applicant was regular visitor in the Ashram and as such, they have not stopped him. As such, merely because applicant was noticed by the said witnesses driving vehicle will not by itself sufficient to prima facie connect the applicant to the commission of the offence particularly when nothing incriminating was recovered from the vehicle.

7. As such, the case of the prosecution which is based on the circumstantial evidence cannot be said to be reposing confidence particularly in the matter completion of theory of events.

8. As such, in our opinion the applicant/appellant is entitled for release on bail after suspending the sentence pursuant to provision 389 of Cr.PC.

9. The applicant be released on bail on executing P.R. Bond in the sum of Rs 25,000/- with one or two sureties in the like amount.

10. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence.

11. Applicant shall attend the concerned Police Station in first week of every even month of English Calendar.

12. The Interim Application stands disposed of.

(S. M. MODAK, J)

(NITIN W. SAMBRE, J.)