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

**INTERIM APPLICATION NO. 3350 OF 2022
IN
CRIMINAL APPEAL NO. 1082 OF 2022**

Gangaram Kashinath Bukale ... Applicant/Appellant

V/s.

The State of Maharashtra ... Respondent

Ms. Vrushali L. Maindad appointed advocate for applicant/appellant.
Mr. V. B. Konde-Deshmukh, A.P.P. for Respondent-State

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ**

DATED : 10th FEBRUARY, 2023

P.C.:

1. Surekha, wife of the applicant died homicidal death.
2. Her brother, P.W. 1 accordingly lodged a complaint based on a extra judicial confession made to him by the applicant/accused. The sole eye witness to the incident, P.W. No. 2-daughter of the deceased and applicant has examined herself in support of the case of the prosecution.
3. The Criminal Court accordingly accepted the testimony of P.W. No. 1 and P.W. No. 2 and in Session Case No. 72 of 2017 awarded conviction u/s. 304 of IPC and sentenced the applicant to life imprisonment.
4. Learned counsel for the applicant appointed by High Court Legal Services Committee submits that the testimonies of P.W. No. 1 and P.W. No. 2 viz. brother of deceased and daughter of deceased does not bring

home the guilt of the accused beyond reasonable doubt. According to her, even if the statement u/s. 161 of Cr.P.C of P.W. No. 2 was recorded and also videographed, the statement u/s. 164 of Cr.P.C. was recorded by the Magistrate, however, she has not stood by the story narrated to the prosecution. According to her, the said witness turned hostile and as such, was subjected to cross examination.

5. She would further urge that P.W. No. 1 is not an eye witness to the incident and based on the alleged extra judicial confession given by the applicant on phone, the said witness visited the spot of the incident resulting into lodging of FIR with Police Patil, P.W. No. 5. She further urged that there is no Forensic Science Report on record to connect the other circumstantial evidences.

6. Learned APP, Mr. V. B. Konde-Deshmukh opposes the prayer based on the last seen theory as the deceased was in company of the applicant being husband and wife. According to him, the circumstances sufficiently speaks of the applicant's involvement in the offence.

7. Having considering the submissions in the backdrop of testimonies of P.W. No. 1, P.W. No. 2 and P.W. No. 5, we are convinced that there is no material on record to infer the involvement of the applicant in the alleged offence.

8. Apart from above, even if the circumstantial evidence is considered, the testimony of P.W. No. 2 if appreciated, it is difficult to

get convinced as to the guilt of the applicant based only on the circumstantial evidence. The applicant has suffered incarceration for more than 5 years.

9. In view of above, in our opinion case for grant of bail is made out.
10. The applicant be released on bail in Session Case No. 72 of 2017 arising out of C.R. 71 of 2017 registered with Manor Police Station for offence punishable u/s. 302 Indian Penal Code upon furnishing P.R. bond in the sum of Rs. 15,000/- with one or more sureties in the like amount.
11. The applicant shall remain outside the jurisdiction of the police station till conclusion of hearing of the appeal
12. The applicant shall neither influence the witnesses nor tamper with evidence in any manner.
13. Application is allowed in aforesaid terms and stands disposed of.

(R. N. LADDHA, J)

(NITIN W. SAMBRE, J.)