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

CRIMINAL BAIL APPLICATION NO. 2372 OF 2022

Shrinivas Baswa Madiwal @
Shrinivas Siddhappa .. Applicant

Vs.

The State of Maharashtra .. Respondent

.....
Mr. Vivek Punjabi for the applicant
Ms. Anamika Malhotra, APP for the respondent – State
.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATED : 21st MARCH, 2024.

P.C.

1. This is an application under Section 439 of the Cr.P.C. in connection with C.R. No. 56 of 2021 registered with Vishnunagar Police Station, Dombivali on 20th March 2021 for the offences punishable under Sections 452 and 302 of the Indian Penal Code.

2. The prosecution story goes like this.

3. Mrs. Kalyani Kisan Berde is the first informant who was working as a house maid. She was acquainted with Mrs. Arati

Arun Sakpal (deceased) 7 to 8 months prior to the incident in question. The applicant was also acquainted with the deceased since both were working together in a hotel. The applicant seems to be a resident of Karnataka State. It is the case of the prosecution that on 19th March 2021 around 6.00 a.m., the first informant had been to the house of the deceased. She had a spare key of the outer safety door of the house. She opened the door and went inside. She started doing her usual work of cleaning and brooming the house. When she was about to enter into the bedroom by opening the latch, she noticed the deceased lying on the floor. Her face had turned blue and black and there was bleeding from her nostrils. She also noticed a yellow-blue coloured saree wrapped around her person and the articles were scattered around. Despite giving calls, the deceased did not respond and, therefore, the first informant immediately rushed to one Sawant, residing in the neighbourhood. One Ashok Ghosalkar who was known as a brother of the deceased was called. Ultimately, the first informant dialed 100 to call the Police.

4. The Investigating Officer visited the scene of occurrence. He recorded the statements of the witnesses, seized the articles from

the spot of incident and an inquest was drawn in the presence of panch witnesses. The dead body was sent for autopsy. The applicant was arrested. Statement of the applicant under Section 27 of the Evidence Act came to be recorded pursuant to which certain articles on the person of the deceased were discovered at his instance. After investigation, a charge-sheet has been filed.

5. First application for bail was rejected by the trial Court on 8th June 2022.

6. I heard Mr. Vivek Punjabi for the applicant and Ms. Malhotra, learned APP at length.

7. At the outset, learned APP fairly admits that there seems to be no motive behind the alleged murder of the deceased though the deceased and the applicant were well acquainted with each other. Admittedly, none of the prosecution witnesses whose statements were recorded under Section 161 of the Cr.P.C., whispered anything against the applicant. The only material available on record is in the form of a statement of witness namely Smt. Devi Sentu Konai recorded under Section 164 of the Cr.P.C. by the Judicial Magistrate First Class, Kalyan and a Memorandum Statement under Section 27

of the Evidence Act.

8. The statement of Devi Konai recorded under Section 164 of the Cr.P.C. reveals that she is a Dance Bar girl basically from Kolkata. On 19th March 2021, she received a missed call from an unknown number. Subsequently, it transpired that it was the applicant who gave her call and called her at Dyna Lodge. She attended Dyna Lodge where she had a sexual intercourse with the applicant, who had paid her Rs.1,000/- and also a touch screen mobile. When she inquired as to whose mobile it was, the applicant informed her that some customer, after consuming liquor, had forgotten it in the dance bar and, therefore, he wanted to gift it to her. It appears that the said mobile belonged to the deceased. However, that itself would not take the prosecution case further in order to show any nexus of the applicant *vis-a-vis* the murder of the deceased even though both were admittedly acquainted with one another.

9. In so far as statement under Section 27 of the Evidence Act is concerned, the Investigating Officer, at the instance of the applicant appears to have discovered certain yellow metal Mangalsutra,

Bangles, Pendant of Ganpati and a Necklace. Though the memorandum statement reveals that after committing the murder of the deceased, the applicant had concealed the aforesaid articles, yet that itself would not be sufficient to connect the applicant with the murder of the deceased more particularly, in light of the fact that there were frequent visitors to the house of the deceased in view of the statement of the landlord of the deceased, who on his letter head of “Kumar Co-op. Housing Society” informed the police that due to the frequent visitors to the house of the deceased, where they used to have late night parties with liquor, there was a kind of nuisance for the other members of the Society. There is no material on record even to show that the articles discovered at the instance of the applicant are, in fact, belonged to the deceased, in order to connect him with the alleged crime.

10. Having taken into consideration the material on record, *prima facie*, it cannot be said that the applicant was the author of the injuries on the person of the deceased due to which she succumbed.

11. Even otherwise, the autopsy report is not final, which

indicates that the cause of death is reserved and Viscera is preserved for histopathological and chemical analysis. Since cause of death has not been conclusively shown by the prosecution, it would be difficult, at least at this stage, to construe that the deceased died a homicidal death. Though there are certain marks on her neck, however, those could only be ascertained during trial after receipt of the final report as regards her Viscera and Histopathological and CA reports.

12. The applicant is behind bars ever since his arrest on 20th March 2021. The charge has not been framed. One does not know when the trial would be concluded. The pre-trial detention of the applicant in judicial custody would not serve any purpose in light of the aforesaid facts. I am, therefore, persuaded to grant bail to the applicant. Now, to the order.

ORDER

- (i) The application is allowed.
- (ii) The applicant be released on executing a P.R. bond in the sum of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the Additional Sessions Judge,

Kalyan.

(iii) The applicant shall attend Vishnunagar Police Station on first day of each month till framing of the charge.

(iv) The applicant shall attend the trial Court after framing charge, scrupulously, unless exempted.

(v) The applicant shall furnish his contact details and residential address to the concerned police station as well as to the trial Court and shall inform in case of any change.

(vi) The applicant shall not tamper with the evidence or influence the complainant, prosecution witnesses or persons concerned with the case.

(vii) In case of breach of any of the conditions, the prosecution is at liberty to seek cancellation of his bail.

13. The application is disposed of in the aforesaid terms.

(PRITHVIRAJ K. CHAVAN, J.)