

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 457 OF 2016

Kunda Balasaheb Waze

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Advocate for Applicant.

Ms. APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : SEPTEMBER 1, 2016.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 13/10/2015 in crime no. 220 of 2015 registered at Paud Police Station for offence punishable under sections 302, 120 (B) r/w 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed.

2) It is the case of the prosecution that on 04/10/2015, the complainant namely Ganesh Kokate lodged a report at the police station alleging therein that his brother was residing at flat no. 203 in the same building. That on 04/10/2015, he was informed by the police of Paud Police Station and

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informed the complainant that pursuant to the missing report lodged by their sister, they had searched for Kailas and his dead body was found in an abandoned condition on the road from Chande to Mulkhed. That on the basis of light bill which was found in his pocket, it was revealed that deceased was Kailas Kokate. That he identified the dead body. It was apparently the case of homicidal death. On 13/10/2015, the wife of the deceased Kailash Kokate was arrested. Similarly, the present Applicant was also arrested as it was revealed that the wife of the deceased has hatched a conspiracy along with the present Applicant and had caused the homicidal death of her husband by hired persons.

3) It is pertinent to note that after the arrest of the Applicant, the statement of the son of the deceased was recorded on 18/10/2015. He had disclosed to the police that Applicant happens to be foster sister of his mother. The statement of the son of the deceased was recorded on 18/10/2015. Applicant was the foster sister of his mother. That on 08/10/2015, he had noticed that his mother was in a disturbed statement of mind and upon enquiry, she had informed her son that she had contacted Subhash Khengare & his friend Yuvraj Jori through the present Applicant and had hired Subhash and Yuvraj

to cause homicidal death of her husband. That on the date of arrest, while in police custody, the statement of the present Applicant was also recorded and she had disclosed to the police in her custodial interrogation that wife of the deceased namely Kavita had requested her to call her brother Subhash. After meeting Subhash, Kavita had directly asked him as to whether he could find some person to cause homicidal death of her husband. That he had called upon Yuvraj and in presence of the Applicant, the amount of Rs. 80,000/- was given to Subhash.

4) *Prima facie* it is clear that the wife of the deceased had conspired with Subhash & Yuvraj who had caused the homicidal death of her husband. Subhash happens to be brother of the present Applicant and had met the principal accused at the request of the present Applicant. Be that as it may, taking into consideration the role attributed to the present Applicant, the nature of the allegations and that she happens to be a woman and would be entitled with the aid of proviso to section 437 of the Code of Criminal Procedure, 1973, Applicant would be entitled to be enlarged on bail. It is made clear that co-accused Kavita, Subhash and Yuvraj shall not claim parity with the present Applicant as is it is clear from the papers of investigation that

Kavita had conspired with Subhash and Yuvraj to cause the murder of her husband. It is also made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) 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.
- (iii) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)