

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

CRIMINAL BAIL APPLICATION NO. 924 OF 2016

Sonya @ Machindra Ravikant Shinde. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Aniket U. Nikam, advocate for Applicant.

Mr. R.M. Pethe, APP for State.

Mr. S.M. Shinde, API, Yavat Police Station, Pune.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : SEPTEMBER 21, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 1/11/2015 in C.R. No. 314 of 2015 registered at Yawat Police Station on 20th October, 2015 for offence punishable under Section 302, 201 read

with Section 34 of the Indian Penal Code. Investigation is completed and charge-sheet is filed on 23/1/2016.

3 It is the case of the prosecution that on 20/10/2015 first information report was lodged at Yawat Police Station stating therein that an unidentified dead body was found in an abandoned condition. It was clear that the deceased had died a homicidal death. The identity of the dead body could not be ascertained. On 30/10/2015 identity of the deceased was traced and it was learnt that it is the dead body of one Bablu Mhatre.

4 That on 1/11/2015 the police of Yawat Police Station had received a secret information that the applicant and co-accused Aba Walke had caused homicidal death of Bablu Mhatre and had thereafter, burnt the dead body, so that the identity of the deceased could not be ascertained. The police had then called upon Aba Walke to the police station. That on the same day, Aba Walke had voluntarily disclosed to the police that on 17/10/2015 he alongwith

the present applicant has caused homicidal death of Bablu Mhatre. He had also given the names of co-accused, who had helped him to cause disappearance of the evidence. On the basis of the said statement, co-accused Aba Walke was taken into custody. The applicant was also arrested.

5 The learned Counsel for the applicant submits that there is no incriminating material against the applicant, which would directly establish the nexus of the applicant with the homicidal death of Bablu Mhatre. The learned Counsel for the applicant also submits that the statement of the co-accused would not be admissible in evidence and hence, it cannot be relied upon at this stage.

6 It appears that the investigating officer had taken the accused to various hotels and Dhabas and inspected the C.C.T.V. footages and recorded the statement of the waiters of the hotels. The learned Counsel for the applicant submits that the statements of the waiters of the said hotels do not indicate that they had identified the present applicant as one of the person seen in the C.C.T.V. Footage and

therefore, according to the learned Counsel, the applicant deserves to be enlarged on bail.

7 In the course of investigation, the statement of one Nisha Kishor Ghotkar was recorded on 20/12/2015, who has admitted that she was in love with the co-accused Aba Walke. She had subsequently severed her relationship with him. The learned Counsel for the applicant submits that the deceased had also some intimate relations with Nisha Ghotkar and according to the prosecution, that could be the motive for causing homicidal death. However, according to the learned Counsel for the applicant, The motive cannot be established in the absence of any corroborative evidence. That there is no test identification parade.

8 As against this learned APP has drawn attention of this court to the statement of one Vinod Magar recorded on 8/11/2015, in which he has disclosed that on 17/12/2015 the applicant had accompanied him to Lifeline hospital for giving dinner to maternal uncle of Vinod

Magar, who was admitted. That the applicant had not accompanied Vinod Magar in the hospital but he waited on the road only. That the applicant had parked his motor cycle in front of the house of Vinod Magar, which has caused obstruction to the traffic. Vinod Magar had enquired with him about his whereabouts. He had called him in the forest area. He had disclosed to him that there was some altercation between him, Aba and another boy and that Vinod Magar should return home.

9 The learned Counsel for the applicant submits that Vinod Magar could be a got up witness, since his statement is recorded after 7 days after the arrest of the applicant.

10 The papers of the investigation would clearly reveal that there is nexus between the applicant and Aba Walke and that they had caused homicidal death of Bablu Mhatre. As on today, the applicant does not deserve to be enlarged on bail. At the stage of grant of regular bail, it would not be appropriate to scrutinise the evidence. In fact, on

4/11/2015 itself the investigating officer had recorded the statement of one Manoj Mhatre who happens to be the elder brother of the deceased. He had disclosed to the police that he knew about the intimacy between Aba Walke and Nisha and that they were going to get married. On 4/11/2015 he had read news that Bablu Mhatre had met a homicidal death and that his dead body was burnt. He had identified the dead body of his brother.

11 It is pertinent to note that in the enquiry, the co-accused had admitted before the police that he had caused homicidal death of the deceased. The admissibility of the said statement would be a matter of appreciation of evidence at the time of trial. As on today, the admissibility cannot be considered. Hence, the applicant does not deserve to be enlarged on bail. The application being sans merits stands rejected.

12 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application

under section 439 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of trial.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)