

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

CRIMINAL BAIL APPLICATION NO. 1092 OF 2016

Kishor Dynandeo Aatkire.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Rahul S. Kate, advocate for applicant.

Mr. A.N. Naikwadi, advocate for intervenor.

Ms. Veera Shinde, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 23, 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 7/12/2015 in Crime No. 371 of 2015 registered at Yewat Police Station for offence

punishable under Section 302 read with Section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 6/12/2015 wife of the deceased i.e. Pushpa Aatkire, who happens to be the mother of the present applicant lodged a report at the police station alleging therein that at about 4.30 a.m. on 5/12/2015 her brother-in-law namely Vilas had informed her that the relatives residing near Urali Kanchan Railway Station had informed him that dead body of her husband i.e. father of the present applicant was found on the railway track. He was identified on the basis of the driving licence and identity card. That she had spoken to her husband on 4/12/2015 at about 10 pm. She had tried to call him at about 11.30 p.m. However, there was no reply. After 12.00 i.e. after mid-night on the same day, the manager of the Hotel run by the present applicant namely Vijay Salunkhe was also missing. There was no contact with him. The post mortem notes of the deceased Dyaneshwar would indicate that he was initially

strangulated and then thrown on railway track. On suspicion, the applicant was arrested on 7/12/2015.

4 The learned APP submits that while in custody, the dead body of deceased Vijay Salunkhe was discovered at the instance of the present applicant and he is charge-sheeted in the Crime No. 375 of 2015 for having caused homicidal death of Vijay Salunkhe.

5 The learned Counsel for the applicant submits that the case registered against the applicant as far as the homicidal death of Vijay Salunkhe is concerned, cannot be taken into consideration in the present case.

6 The learned Counsel for the applicant also submits that post mortem notes as far as Dnyaneshwar Aatkire are concerned, the same do not form part of the compilation of the charge-sheet. The learned Counsel submits that there is no compliance of section 207 of the

Code of Criminal Procedure, 1973 and it would cause serious prejudice to the defence of the accused.

7 As far as present case is concerned, there is recovery of rope and rod at the instance of the present applicant under Section 27 of the Indian Evidence Act. The recovery of the weapon cannot be made the sole ground for rejecting the application under Section 439 of the Code of Criminal Procedure, 1973. However, prima facie it appears from the material collected in the course of investigation that the investigating agency would be able to prove the charge under Section 302 of the Indian Penal Code against the present applicant as far as the death of Dynaneshwar Aatkire is concerned. It is a case of patricide. No sympathy can be shown. Hence, the application being sans merits, deserves to be rejected.

8 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. The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)