

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

CRIMINAL BAIL APPLICATION NO. 1356 OF 2016

1 Supdu Vitthal Borse.
2 Draupadabai Supdu Borse. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Rameshwar N. Gite, advocate for Applicants.

Mr. S.S. Pednekar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 1, 2016**

P.C.:

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

2 This is an application under section 439 of the Code of Criminal
Procedure, 1973. The applicants herein are arrested on 22/2/2016 in
Crime No. 17 of 2016 registered at Jaikheda district, Nashik for the
offence punishable under section 302, 201, 498A, 323, 504, 506 read

with section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 11/5/2016.

3 It is the case of the prosecution that the daughter in law of the present applicants died a homicidal death in her matrimonial home. Her dead body was found in the well of Madhukar Vitthal Borase. The dead bodies of dead body of the daughter-in-law as well as the grand-daughter of the applicants were found floating in the well. Initially a missing report was lodged. After finding of the dead bodies, the dead bodies were sent to civil hospital. A.D. No. 7 of 2016 was registered. The inquest panchanama was conducted in the A.D. Enquiry. After first information report was lodged by the brother of the deceased, offence was registered, scene of offence panchanama was conducted after investigation was set in motion. The post mortem notes clearly indicate that the deceased Ujwala had died a homicidal death in her matrimonial house.

4 The learned APP submits that the applicants herein were the responsible persons in the house. They are bound to give an explanation under section 106 of the Indian Evidence Act and therefore, they are not entitled to be enlarged on bail. The learned APP further submits that the conduct of the present applicants needs to be taken into consideration in as much as when the dead bodies were drawn from the well, applicants had not waited for a moment even to see the dead bodies but had left the spot.

5 The conduct of the accused after offence has been committed can be considered under section 8 of the Evidence Act at the time of trial.

6 The learned Counsel for the applicants submits that the applicant no. 1 is 66 years old and the applicant No. 2 is 61 years old lady. It is submitted that both the applicants being old aged and that they are in jail for almost 7 months, they are entitled to be enlarged on bail.

7 Taking into consideration the age of the applicants and moreover, the applicant no. 2 happens to be a woman and would be entitled to grant of bail under the proviso to section 437 of the Code of Criminal Procedure, 1973. In view of this, the applicants deserves to be enlarged on bail.

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.

9 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each and one or more solvent sureties in the like amount.

(iii) The applicants shall not tamper with the evidence.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)