

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

CRIMINAL BAIL APPLICATION NO. 1665 OF 2016

Rohan @ Bunty Krushna Gaikwad. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Ranjeet M. Pawar, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : SEPTEMBER 26, 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 30/5/2014 in Crime No. 237/14 registered at Baramati City Police Station for

offence punishable under Section 302, 143, 148, 149 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 29/5/2014 Smt. Sujata Jadhav, mother of Sagar Jadhav lodged a report at the police station alleging therein that on 28/5/2014 at about 10.30 p.m. present applicant alongwith co-accused had been to her house on two motor cycle. Papu Dhotre had called upon him. She had attempted to stop her son from accompanying them. However, the son informed that they are his friends and therefore, he has left in his company. Thereafter, he informed his mother that he is going to Baramati with his friends. He did not return home. The calls made by his mother were not being answered. On 29th May, 2014 the mother was searching for her son. At about 10.30 a.m. the dead body of her son Sagar was reported to be found in Avdhoot Nagar in Zate Estate. She identified the dead body. She lodged first information report. On the basis of the first information report so filed, supplementary statement

was recorded on 11/8/2014, wherein she had reiterated the allegations.

4 The post mortem was conducted on the dead body of Sagar, which shows that the cause of death was “due to heamorrhagic shock due to both caroted rupture”. The injuries were ante mortem.

5 The learned Counsel for the applicant submits that the co-accused Ganesh Chavan has been enlarged on bail by the Sessions Court vide order dated 27/4/2016. It is submitted that by virtue of doctrine of parity, the applicant deserves to be enlarged on bail. The learned Sessions Court has observed that although there are two witnesses who claim to have seen the deceased in the company of all the accused persons named in the first information report, their statements would be prima facie doubtful as there is absence of motive and intention. At this stage, motive and intention cannot be inferred or gathered. The investigating agency would not be able to put forth any evidence in respect of motive, as the motive and

intention have to be gathered after recording of substantive evidence. Evidence is substantial in nature. The strongest circumstance against the applicant is that he is lastly seen in the company of the deceased. Not only this, but the accused persons had gone to the house of the deceased and had taken him alongwith them. Hence, it would be incumbent upon the accused to explain the circumstance in which Sagar had sustained injuries, which resulted in his homicidal death.

6 In view of this, the applicant does not deserve to be enlarged on bail. However, it appears from the record that there is no progress in the trial. The applicant is in custody for almost 2 years. Hence, the learned Sessions Judge seized with the matter is requested to make an endeavour to conclude recording of substantive evidence within 6 months from the date of framing of charge. The application stands dismissed.

7 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.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)