

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

CRIMINAL BAIL APPLICATION NO. 1733 OF 2016

Prakash Ganpat Nimbalkar.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent

Mr. H.V. Nimbalkar i/b. Mr. Prashant S. Hagare, advocate for applicant.

Mr. B.A. Lawate, advocate for intervenor.

Mr. Vinod Chate, APP for State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : NOVEMBER 28, 2016.**

P.C.

Heard the learned Counsel for the applicant, learned Counsel for intervenor 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 24/3/2016 in Crime No. 54 of 2016 registered at Velapur Police Station for offence punishable under section 302, 498A, 323, 504, 506 read with Section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed on 19/6/2016.

3 It is the case of the prosecution that on 22/3/2016, the present applicant filed a incident report before Velapur Police Station contending therein that on 22/3/2016 when he was sleeping in the afternoon, his wife woke him up and informed him that Tejaswini i.e. their daughter-in-law is not seen in the house. He searched for her in close proximity and then lastly he found her dead body floating in the well. He removed the dead body and placed it in his house. His son Chandrashekhar, who was married to Tejaswini, also helped him in removing the dead body from the well. They immediately informed Ramchandra Dinkar Deshmukh, who happens to be the

father of Tejaswini. On the basis of the said report, A.D. No. 7 of 2016 was registered at Velapur Police Station. Investigation was set in motion.

4 The dead body of Tejaswini was sent for autopsy. The cause of death was “due to smothering”. The police had arrived at a conclusion that it was a case of homicidal death. In the course of investigation, it was revealed that the present applicant had led them to the well where the dead body of Tejaswini was found. The memorandum was recorded prior to discovery of the dead body. According to the prosecution, at the time of recording of memorandum, the applicant had disclosed that since Tejaswini was not efficient in domestic work as well as agricultural work, he had caused homicidal death.

5 The learned Counsel for the applicant rightly submits that this

disclosure cannot be converted into admissible evidence at the time of trial and therefore, no implicit reliance can be placed on the same. Learned APP submits that the applicant had misled the investigating agency and therefore, he does not deserve to be enlarged on bail.

6 It is pertinent to note that the son of the applicant, who happens to be the husband of the deceased Tejaswini and the wife of the applicant have been enlarged on bail by the Sessions Court vide order dated 19/4/2016 i.e. prior to filing of the charge-sheet. The State has not challenged the said order dated 19/4/2016. It is true that the learned Sessions Judge has observed that the offence under section 302 of the Indian Penal Code is committed by accused No. 3 Prakash Nimbalkar and that the other accused had assisted him in concealing the crime. The papers of investigation do not indicate that it is correct statement of fact.

7 The learned Counsel for the applicant submits that the offence which can be proved at the trial against the present applicant could at the most under section 201 of the Indian Penal Code. And hence, prays that the applicant be enlarged on bail.

8 The learned APP submits that the dead body was discovered at the instance of the applicant and hence, the applicant does not deserve to be enlarged on bail. It could be a discovery of fact i.e. dead body of Tejaswini was found in the well.

9 Taking into consideration the papers of investigation, submissions advanced across the bar, it is a case of circumstantial evidence and the fact that the co-accused have been enlarged on bail even prior to the filing of the charge-sheet, the applicant deserves to be enlarged on bail.

10 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.

11 Hence following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall not tamper with the evidence.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)