

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

CRIMINAL BAIL APPLICATION NO. 1766 OF 2016

Baban Dattu Indulkar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Vivek S. Babar, advocate for Applicant.

Mr. Prashant Jadhav, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 6, 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 8/2/2016 in Crime No. 35 of 2016 registered at Malshiras Police Station for offence punishable under Section 302, 201, 182 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 Superintendent of Police, Solapur Rural had received an anonymous letter on 5/2/2016. It is disclosed therein that Satish Indalkar has died homicidal death at the hands of his family members i.e. father, mother, brother of the deceased. The informant had also given cell phone numbers of the present applicant as well as of the deceased. It appears that the daughter of the present applicant was summoned at the police station. Her statement was recorded on 8/2/2016. She had disclosed to the police that her elder brother Satish was not in gainful employment but was harassing the family members. He used to ask for the account of the agricultural income. The father had made several efforts to convince him to mend his ways. He used to assault Family Members and drive them out of the house. On 17/12/2015 at about 9 a.m. they had met Satish and at that time, Satish had assaulted her mother Mandadevi. Father had intervened but he was also assaulted by Satish. Thereafter, they had visited the relatives. That sometimes Satish used to go to the house of Ashok Avchat.

4 According to the complainant, on 24/12/2015 at about 11.00 to 11.30 p.m. they had heard voice of Satish crying for help and so she had rushed to the room and there, she has seen her father i.e. the present applicant seated on the chest of her brother Satish and was strangulating and thereafter, Satish had succumbed to the strangulation. The applicant saw his daughter and informed that he had eliminated all the trouble once for all. That he had carried Satish on his shoulder outside the house. After coming home, he talked on the cell phone with somebody. Her father had threatened her and due to inter se relationship she had not disclosed the incident to anybody.

5 Needless to say that the first informant was an eye witness. The applicant was arrested on the same day i.e. on 8/2/2016. At his instance and on the basis of the memorandum, dead body of Satish was discovered from the underground canal. It was an isolated place. The dead body was in decomposed state. Autopsy was

performed on the said dead body. Bones were preserved. Bones of Satish alongwith bone and blood samples of the present applicant and his wife were sent for forensic analysis and DNA report is awaited.

6 The learned Counsel for the applicant vehemently submits that the compilation of the charge-sheet would show that there was extra judicial confessions of the brothers of the deceased i.e. sons of the present applicant. However, they had not set the law into motion nor disclosed it to anybody and therefore, the same cannot be relied upon. The learned Counsel further submits that the skeleton that was discovered at the instance of the present applicant could not have been identified and therefore, the said discovery is disputed. The learned APP admits that there is no challenge to the discovery of the skeletal remains as it was within special knowledge of the applicant. It is not the case of the applicant that the applicant had misled the investigating officer to discover some other skeletal remains within his special knowledge. Admittedly, the first informant is an eye witness to the said incident. It is neither the case of the applicant that

from 24/11/2015 to 8/2/2016, the applicant had made any efforts to search for the Satish.

7 Taking into consideration the papers of investigation and more particularly, the discovery of the skeletal remains of the deceased at the instance of the present applicant, the applicant does not deserve to be enlarged on bail. The application being sans merits stands 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.

9 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)