

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

CRIMINAL BAIL APPLICATION NO. 1769 OF 2016

Dhananjay Nana Khomane. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Prashant M. Patil, advocate for Applicant.

Mr. Rajan Salvi, 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 9/3/2015 in Crime No. 26 of 2015 registered at Jejuri Police Station for offence punishable under Section 302, 201, 120(B) 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 8/2/2015 Prasad Ashok Jadhav lodged a report at the police station alleging therein that on 8/2/2015 Haribhau Gaikwad had informed on telephone that somebody had murdered Ashok Jadhav and thrown him in abandoned condition near agricultural land of Rajendra Dagdoba Jadhav. First information report was lodged against unknown persons and investigation was set in motion.

4 Statement of Haribhau Gaikwad was recorded on 9/2/2015. He has disclosed to the police that there was enmity between Ashok Jadhav i.e. deceased and Maruti Nana Saste. That the deceased had apprehended danger at the hands of Maruti Saste. That supplementary statement of Haribhau Gaikwad was recorded on the next day of the arrest of the present applicant i.e. on 10th March, 2016. He had disclosed to the police that the present applicant alongwith Bhanudas Khomane, Kondiba Chavan, Sultan Sayyed had caused homicidal death of Ashok Jadhav. The incriminating material

is in the form of extra judicial confession to Suresh Jagtap, who happens to be the close relative of deceased Ashok Jadhav.

6 The learned Counsel for the applicant vehemently submits that the statement of Suresh Dashrath Jagtap was recorded on 23/4/2015 i.e. after 2 and half months of the incident. The learned Counsel submits that the witness, despite the fact that he was close relative of the deceased, had not disclosed the incident to anybody and therefore, the same cannot be relied upon.

7 The learned Counsel has also relied upon the order passed by this Court dated 16/2/2016 granting bail to Maruti Saste. The material against the said applicant was in the nature of motive and extra-judicial confession. The Hon'ble Court had held that the extra-judicial confession cannot be considered to be a incriminating circumstances, as it was retracted soonafter it was recorded.

8 It is true that motive by itself may not be an incriminating material in an offence under Section 302 of the Indian Penal Code. As far as the present applicant is concerned, there is an eye witness. Eye witness will be put to the test of cross-examination and the same can be verified at the time of trial. The learned APP vehemently submitted that the alleged eye witness has specifically stated that since he is also resident of the same village and taking into consideration the influential position of the accused person, he had no courage to disclose the incident to anybody. Only after lapse of time, he had gathered confidence to disclose the incident dated 7/2/2015. Hence, the applicant does not deserve to be enlarged on bail as prima facie as on today, there is direct evidence against the applicant in the form of eye witness.

9 The application being sans merits stands rejected.

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. The learned Sessions Judge is requested to make an endeavour to conclude recording of evidence as far as possible within 9 months from the date of framing of charge.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)