

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

CRIMINAL BAIL APPLICATION NO. 83 OF 2017

Bhagwan Damu Dhule

... Applicant

Versus

The State of Maharashtra
through Police Station, Manpada.

... Respondent

Mr. Rahul Arote for Applicant.
Mr. R.M.Pethe, APP for Respondent/State.

**CORAM: SMT.SADHANA S.JADHAV,J.
DATE : JANUARY 24, 2017.**

P.C.

1 Heard the learned counsel for the applicant and the learned
APP for State. Perused papers.

2 This is an application under Section 439 of the Code of
Criminal Procedure, 1973. The applicant herein is arrested on 7/1/2016 in
Crime No. 665 of 2015 registered at Manpada Police Station for the offence

punishable under section 365, 302, 201 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 5/12/2015 Sevika Sikandar lodged a report at the police station alleging therein that her younger sister Dipika @ Priya was residing with her. She was acquainted with one Jayesh Patil. The acquaintance had turned into love and thereafter, she was residing with Jayesh Patil at Davdi. There used to be intermittent quarrel between Jayesh Patil and her sister. According to the first informant, whenever there was shortage of water, she used to go for bathing in the house of Dipika. On 2/11/2015 she had met her sister. On 3/11/2015 the first informant had been to the house of Dipika. She was not at home. The first informant had extra key of the house of Dipika. She opened the door. The things in the house were scattered. She tried to call upon her sister. Call was unanswered. On 4/11/2015 she received a phone call from the cell phone of her sister. The caller was unknown person, he

informed Sevika that Priya had gone out of station. On 7/11/2015 the first informant had again called upon her sister. The call was unanswered. She called upon Jayesh Patil to enquire about whereabouts of her sister. Jayesh Patil had informed that Dipika has gone to Bangalore and that she is not with him. Since Dipika was not found and Jayesh was giving evasive answer, therefore, the first informant lodged report against Jayesh Patil. On the basis of the said report Crime No. 665 of 2015 was registered at the police station against Jayesh Patil for offence punishable under section 365 of the Indian Penal Code.

4 Jayesh Patil was arrested on 6/12/2015. In the course of interrogation, Jayesh Patil had disclosed to the police that he had caused homicidal death of Dipika and that the body was disposed of by setting it ablaze with the help of the present applicant and one another person. It was on the basis of this information that the present applicant has been arrested and continues to remain in custody. The applicant is arrested along with Mithun Mhatre.

5 Upon perusal of the papers of investigation, it is clear that Dipika had died homicidal death in the house rented by Jayesh Patil. As far as the accused Jayesh Patil is concerned, it appears to be a case of custodial death. The applicant has been arrested only on the basis of the disclosure statement of Jayesh Patil that the body of Dipika was set ablaze with the help of the present applicant and Mithun Mhatre.

6 The learned APP also fairly submits that the applicant deserves to be prosecuted for the offence punishable under section 201 of the Indian Penal Code. The punishment contemplated for offence punishable under section 201 of the Indian Penal Code is rigorous imprisonment for four years, since the co-accused Jayesh Patil is being prosecuted for offence punishable under section 302 of the Indian Penal Code, which is punishable with death or imprisonment for life.

7 Taking into consideration the allegations levelled against the present applicant, the compilation of the charge-sheet, this Court is of the opinion that the applicant deserves to be enlarged on bail. Moreover, there is no material on record to indicate that the present applicant had been to the house of Jayesh Patil on the day of the incident or that there is any evidence of last seen together. The co-accused Mithun Mhatre is enlarged on bail by this Court vide order dated 4th January, 2017.

8 However, it is made clear that the observations made herein above are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of FIR or discharge or at the time of trial.

9 Hence, the 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 sureties in the like amount.
 - (iii) The applicant shall report to Manpada Police Station on 1st Sunday of each month between 10.30 a.m. to 12 noon till framing of charge.
- 10 The application is disposed of accordingly.

(SMT.SADHANA S.JADHAV, J.)