

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 444 OF 2016

Mr. Nikesh Sunil Kadam	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Niranjan Mundargi, i/b. Mr. Randhir Singh, Advocate for the applicant.
Mrs. P.P.Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 25th January, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 10.5.2015 in Crime No.164 of 2015 registered at Tulinj Police Station, Dist. Palghar. The investigation is completed and charge-sheet is filed against the present applicant for the offence punishable under Section 302 of the Indian Penal Code.

2. It is the case of the prosecution that on 9.5.2015, Vinod Palande lodged a report at the police station that the dead body of his son Vaibhav was found in an abandoned condition near St. Alloysius School. It was apparent that Vaibhav had died homicidal death. Vaibhav was working as a waiter in the Canteen of Mahanand Dairy at Goregaon. He used to visit his house once a week i.e. on Sunday. The papers of investigation

would reveal that Nikesh Kadam was working in the same canteen along with Vaibhav. On 8.5.2015, Nikesh Kadam had informed the Manager of the canteen that he desires to attend the relative's marriage and therefore borrowed Rs.500/-. He had also informed that he would be on leave for the next two days. On that day, Vaibhav had attended his duty but was asked to go home as he was absent from duty without permission on the previous two days. On 9.5.2015, Nikesh Kadam had attended the duty and at that time, he had an injury on his forehead. The owner/Manager had questioned him about the same and he had disclosed that he had sustained the said injury in a quarrel at the time of marriage.

3. The material on record would indicate that the present applicant had accompanied Rohit to the canteen and had left the canteen immediately. It further appears from the record that the present applicant was arrested by the police as there was material to show that he had quarreled with the deceased earlier. There is no material to indicate that the deceased was last seen in the company of the present applicant. It further appears that there is recovery of the blood stained clothes at the instance of the present applicant. However, it is pertinent to note that the memorandum under Section 27 of the Indian Evidence Act of the person clearly shows that the blood stained clothes were of Rohit and not of the present applicant

or that of the deceased. By an order dated 13.1.2017, the co-accused Rohit @ Batla Ramesh Nachare was enlarged on bail by this Court.

4. The case rests on circumstantial evidence. As on today, there is no sufficient material to clearly establish any circumstances to indicate that the applicant is the assailant of Vaibhav. It is in these circumstance that the Court is of the opinion that the applicant deserves to be enlarged on bail.

5. However, it is made clear that the observations made hereinabove are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (I) The application is allowed.
- (ii) The applicant be enlarged on bail on his furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant shall not reside within the jurisdiction of Nallasopara Police Station and Tulinj Police Station till conclusion of trial.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)