

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

CRIMINAL BAIL APPLICATION NO. 1406 OF 2016

Pritam Ramdas Kamble. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Hemant Ingale i/b. Mr. Prashant Goyal, advocate for Applicant.

Mr. Arfan Sait, APP for State.

Mr. Amar V. Jagdale, API, Rabale Police Station, MIDC, Navi Mumbai.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : MARCH 22, 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 27/11/2015 in Crime No. 241 of 2015 registered at MIDC Police Station, Rabale,

Thane. Investigation is completed and charge-sheet is filed for offence punishable under Section 302, 201 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that Soheli and Shabir were good friends. The accused No. 1 Deepak was also a good friend of Shabir. That he was in love with the sister of Shabir. One day under the influence of alcohol, he had disclosed to Shabir that he is in relationship with his sister. Shabir was enraged. In the meanwhile, Soheli had mobile recordings of Deepak and sister of Shabir. He was blackmailing Deepak that unless he shells out some amount, Soheli would hand over the said mobile recordings to Shabir.

4 The present applicant also happens to be a friend of Shabir and Soheli and they used to be in each other's company quite often. Shabir had gone missing on 25/7/2015. His mother made enquiries with his friends. She had named the present applicant as one of the friend of Shabir. She had not enquired with the present applicant.

Two months thereafter, she met one Mohd. Ali Jahedali Choudhary @ Babu who had disclosed that Shabir had been killed. The investigation was set in motion. Accused Deepak and Mohd. Ali Jahedali Chaudhary @ Babu were arrested. At their behest a beheaded body was found. DNA report shows that he was Shabir. The accused Deepak and Mohd. Ali Jahedali Choudhary were taken into custody.

5 In the course of interrogation of the prime accused, it was reiterated that 8 months prior to their arrest, they had also killed Soheli and had thrown his dead body in a creek. They were taken to the place. However, at that time, except handkerchief and footwear of Soheli, nothing is found. On 7/11/2015 in further interrogation the accused had reiterated that they had cut the body of Soheli and thrown the same at the said place. That on 7/11/2015 when the investigating agency was taking an inspection of the said spot, they had found skeletal remains in the form of decomposed remnants and other parts of the body. The skeleton remains of the said body were

sent for DNA testing. However, due to efflux of time, portions of the body could not be amplified for the purpose of DNA test.

6 As far as homicidal death of Shabir is concerned, Crime No. 236 of 2015 is registered on 4/11/2015 and charge-sheet is filed in January, 2016. The present applicant is not charge-sheeted in Crime No. 236 of 2015.

7 As far as homicidal death of Soheli is concerned, Crime No. 241 of 2015 was registered at Rabale Police Station and charge-sheet is filed in January, 2016. The present applicant was arrested on 27/11/2015. The arrest panchanama shows that at the time of arrest itself, the applicant had admitted before the police that he was equally instrumental in causing homicidal death of Soheli. After his arrest, he was again taken to the place where the remnants of Soheli were allegedly found. There is a panchanama to that effect. The papers of the investigation would indicate that besides the disclosure statement, in the arrest panchanama and the memorandum dated

27/11/2015, there is no material which was collected in the course of investigation, which may be converted into admissible evidence at the time of trial. It is true that the mother of Shabir as well as sister of Shabir had disclosed the name of the present applicant as one of the friend of Shabir and Soheli.

8 It is further pertinent to note that the applicant had not enquired with the family or any friend about the whereabouts of Shabir or Soheli during the period when they were missing.

9 The learned APP submits that this conduct of the applicant is sufficient to hold that he had knowledge about the homicidal death of Shabir and Soheli and therefore, although he was a good friend, he had not enquired about the same. The submission can be considered provided, there is some cogent material, which would sufficiently indicate that the applicant was involved. The possibility that the applicant is involved in the homicidal death of Shabir and Soheli cannot be ruled out. However, while considering an application

under section 439 of the Code of Criminal Procedure, 1973, it would be incumbent upon the Court to ascertain as to whether there is any concrete material implicating the accused. It is in this circumstance that the applicant deserves to be enlarged on bail.

10 Moreover, the Court cannot be oblivious of the fact that Swapnil @ Bunty who is also charge-sheeted in the present case has been enlarged on bail by Additional Sessions Judge,thane vide order dated 19/4/2016. The said order is not challenged by the prosecution and has attained finality. While rejecting the application of the present applicant, the learned Sessions Court has taken into consideration the submission of the prosecution that “The applicant had called up the deceased on the hill with an intention to kill him. CDRs of the applicant have been collected by the IO.”

11 Upon enquiry, learned APP submits that the investigating agency could not locate the exact cell phone number either of the

deceased or of the present applicant to make a statement that the applicant was an instrumental in calling Sohail on the hill.

12 Upon query made by this Court, the Investigating Officer makes a statement that the charge is framed two weeks ago. The statement of the learned APP that the investigating officer had not cooperated with the learned AP also needs to be taken into consideration.

13 Be that as it may, taking into consideration the material collected in the course of investigation, the fact that co-accused against whom there are similar allegations has been enlarged on bail, this Court is of the opinion that the applicant deserves to be enlarged on bail.

14 The learned Sessions Court shall not be influenced by the said observations, as they are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 after filing of charge-sheet. The possibility that there can be substantial material against

the applicant at the time of trial or in the statement under section 313 of the Code of Criminal Procedure, 1973 cannot be ruled out.

15 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 local solvent sureties in the like amount.
- (iii) The applicant shall not leave Mumbai, Thane and Palghar till conclusion of the trial.
- (iv) The applicant shall attend Rabale Police Station on 1st and 3rd Saturday of each month till conclusion of the trial.

(v) The applicant shall attend each and every date of hearing before the Sessions Court. Upon failure to attend any two consecutive days before the Sessions Court, the learned Sessions Court shall issue non-bailable warrants against the applicant and take him in custody.

(vi) The applicant shall not tamper with the evidence.

16 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)