

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

CRIMINAL BAIL APPLICATION NO. 1491 OF 2016

Arvind Balu Shinde.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Pratap B. Kakade, advocate for Applicant.

Mr. Arfan Sait, APP for State.

Mr. D.A. Chavan, API, Mumbra Police Station.

**CORAM : SMT. SADHANA S. JADHAV, J
DATE : JANUARY 11, 2017**

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 13/4/2015 in Crime No. 396 of 2015 registered at Mumbra Police Station. The

investigation is completed and charge-sheet is filed against the present applicant 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 on 13/4/2015 Sunil Salvi, resident of Sthapathya Apartment lodged a report at the police station that he is also operating water supply pump of the said building. On 13/4/2015 at about midnight, he had been to pump room of the said building. At that time, he noticed that two persons were peeping into sewerage tank of Saivihar. They were throwing dead body in the tank. He suspected some foul play and therefore, called the members of the society. When the members of the society gathered, two persons started fleeing from the spot. They were chased by the members of the societies and at that time, they had disclosed that they were on inimical term with one Babu resident of Bholenath complex, Mumbra and that they have caused his homicidal death and

were attempting to dispose of the dead body. On the basis of this report, Crime No. 396/15 is registered.

4 It appears from the record and the statement of the witnesses that the co-accused Shiva Singh was apprehended on the spot by the first informant and the witnesses. The police was called. Upon enquiry Shiva Singh has disclosed that he alongwith present applicant had assaulted the deceased Babu with a piece of stone and in order to cause disappearance of the evidence had thrown the dead body in the sewerage tank of Sai Vihar building. It was after the arrest of the present applicant that crime No. 396 of 2015 was registered and therefore, statement of Shiva Singh implicating himself and the present applicant can be taken as an extra judicial confession made to independent witnesses and it was not made to the police in the course of investigation.

5 From the papers of investigation, it is also clear that the clothes of the accused seized by the police were bloodstained. That the applicant had no plausible explanation for the presence of bloodstains on his cloth.

6 The learned Counsel for the applicant has vehemently submitted that there is discrepancy between the statement of the first informant which go to the root of the matter. It is also submitted that the clothes of the applicant were not sealed on the spot before they were sent for chemical analysis and therefore, according to the learned Counsel, there is no material against the applicant and that he has been falsely implicated.

7 The submission hold no good ground since this Court has perused the papers of investigation and it appears that there was an extra judicial confession by the co-accused. It is pertinent to note that the investigating agency for the reasons best known to the

Investigating Officer has not recorded statement of the co-accused under section 164 of the Code of Criminal Procedure, 1973. Or else the statement could be considered at the time of trial under section 30 of the Indian Evidence Act. The material collected in the course of investigation is sufficient to hold that the applicant is involved in Crime No. 396 of 2015.

8 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)