

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1502 OF 2016

Altaf @ Babloo Rafique Shaikh
V/s.

.....Applicant

The State of Maharashtra

....Respondent

Ms. Sushma Mishra Advocate for Applicant.

Mr. Arfan Sait APP for the State.

Mr. B. S. Devare, HC Virar Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 13th FEBRUARY, 2017.

PC :

1) Heard. This is an application under section 439 of Code of Criminal Procedure, 1973. Applicant herein is arrested on 12/06/2013 in crime no. 242 of 2013 registered at Virar Police Station for offence punishable under sections 302 r/w 34 of the Indian Penal Code.

2) At the outset, the learned APP submits that till today, the substantive evidence of 10 witnesses has been recorded and hence, it would not be appropriate to consider the application for bail on merits. However, the learned counsel for the applicant submits that by an order dated 25/01/2017, original accused no. 1 Nisha, widow of Raju Nalawade has been enlarged on

bail. Perused the order passed by the learned Sessions Court. It is observed that the case is based on circumstantial evidence and there is no chance of tampering with evidence. Accused has right of speedy trial and that the prosecution could not secure the presence of witnesses on various dates and therefore applicant was languishing in jail. It is observed that applicant Nisha has three small children to be looked after and therefore, the learned Sessions Judge has enlarged the accused on bail. However, this Court is not inclined to consider the application for bail on the ground of parity.

3) It is the case of the prosecution that on 25/05/2013, Dilip Patil who is working as supplier of sand and bricks lodged a report at the police station alleging therein that on 25/05/20103 in the morning at about 9.00 a.m., his servant had informed him that an abandoned dead body of a male is lying near Vaitarna Railway Bridge. Mr. Patil had informed the police about the same. It was apparent that the said person must have died a homicidal death and hence, crime no. 242 of 2013 was registered at Virar Police Station for offence punishable under section 302 of the Indian Penal Code. In the course of investigation, after recording the statements of several witnesses, the dead body was identified as that of Raju Nalawade. Statements of witnesses had

indicated that present applicant was acquainted with wife of the deceased. It also appears from the records that deceased Raju Nalawade was in a habit of assaulting his wife under the influence of alcohol. The statement of their son Mayuresh has also been recorded and he has disclosed to the police that his father used to assault his mother. Mayuresh is acquainted with the present applicant as he used to visit the house of Nisha in the absence of his father.

4) It is the case of the prosecution that under the pretext of the watchman's job at a farm house, deceased was called at Vaitarna. He was assaulted and dead body was abandoned.

5) The learned counsel for the applicant submits that the case rests on circumstantial evidence and that no role is attributed to the present applicant except that he was acquainted with the wife of the deceased. The learned counsel has also submitted that the applicant had met with an accident just two days prior to the incident. The alleged incident is dated 25/05/2013, he had fractured his leg and therefore, it cannot be said that he is involved in causing homicidal death of Raju Nalawade.

6) Investigating agency has recorded statement of Dr. Rakesh Kubernath who has disclosed to the police that on 25/05/2013, present applicant had

been to his clinic along with his mother and two months old infant and had informed the doctor that there is some deformity by birth in the leg of the infant. At that time, applicant had told Dr. Rakesh Kubernath that just two days prior to 25/05/2013, he had fallen from his motorcycle and that he has sustained injury to his right knee and ankle. Applicant had disclosed that he was examined by a doctor residing closeby. Doctor had recommended X-ray and after applicant had gone through said test, doctor informed him that it was just a blunt trauma and that he had given bandage to be tied to the knees. He had specifically observed that applicant had not sustained any fracture to his legs from the knees. It is therefore, clear that applicant was creating situations to mislead the investigating agency. There are C.D.R. details in respect of the constant contact with Nisha Nalawade and the present applicant. Nisha was working as surrogate worker, care-taker. Papers of investigation would clearly indicate that present applicant had in connivance with accused no.1 Nisha has in all probabilities caused homicidal death of Raju Nalawade.

7) In the peculiar facts of the case, applicant does not deserve to be enlarged on bail. Hence, application stands rejected.

(SMT. SADHANA S. JADHAV, J.)