

*Nalawade*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1659                      OF 2017

Lakhan Ashok Nilaje                                              ...Applicant.  
vs.  
The State of Maharashtra                                              ..Respondent.

Mr.U.R. Mankapure for the Applicant.  
Mr. S.S.AGarkar, APP. for the State.

CORAM: A.S.GADKARI, J.  
DATE : 8th September, 2017.

P.C.

1.                      This is an application under Section 439 of Cr.P.C. for bail in CR No.13 of 2017 dated 10.3.2017 registered with Kurlap Police Station, District Sangli under Section 302 and 201 read with 34 of the Indian Penal Code.

2.                      It is the prosecution case that the applicant was having love affair with Ms. Namrata i.e. sister of deceased Rahul Rajendra Magdum due to which deceased was having animosity against the applicant. That the applicant in connivance with co accused Santosh committed murder of the deceased Rahul Magdum in the intervening night of 22.2.2017 and 23.2.2017 firstly by strangulating with handkerchief and further by smashing his head by stones and thereafter threw his dead body in river Varana. On 24.2.2017, at about

8.00p.m. the dead body of the deceased Rahul was found at the bank of the said river at Village Kanegon . A police constable attached to Kurlap Police Station initially lodged ADR No.5/2017 under Section 174 of the Cr.P.C. and subsequently the present crime is registered. During the course of investigation the applicant came to be arrested on 11.3.2017. After completion of investigation the police have submitted charge sheet.

3. The prosecution has propounded in all three circumstances against the applicant namely i) last seen together ii) extra judicial confession given by the applicant to the mother of the deceased namely Vilasmati Magdum and iii) recovery of handkerchief at the instance of the applicant.

4. As far as first circumstance of last seen together is concerned, the witnesses have seen the deceased and the applicant lastly at about 6.00p.m. on 22.2.2017 and the dead body of the deceased Rahul was found on 24.2.2017 at about 8.00 p.m.near the bank of river Varana at Village Kanegaon which falls in the jurisdiction of Kurlap Police Station, District Sangli. Prima facie, it appears that there is a substantial gap between the time of last seen together and the finding of the dead body of the deceased. As far as extra judicial confession

given by the applicant to the mother of the deceased Smt. Vilasmati Magdum is concerned, her first statement was recorded on 2.3.2017 which is absolutely silent about the details narrated by her in her subsequent statement dated 12.3.2017 wherein the extra judicial confession is mentioned and it prima facie appears that subsequent statement dated 12.3.2017 is an improvement to her earlier version narrated to the police on 2.3.2017. It is also to be noted here that on 12.3.2017 the police have recorded a fresh statement of the witness namely Vilasmati Magdum instead of recording supplementary statement and which prima facie creates suspicion about its authenticity. The last circumstance of recovery of handkerchief at the instance of the applicant under recovery panchanama dated 18.3.2017 under Evidence Act is concerned, prima facie, it appears that there is no connecting link of evidence about the fact that the said handkerchief was in fact used for strangulating the deceased.

5. In view of the above, the applicant has made out a case for release on bail.

6. Hence, the following order.

a) The applicant be released on bail in CR No.13 of 2017 dated 10.3.2017 registered with Kurlap Police

Station, District Sangli on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.

b) After his release from the jail, the applicant shall attend the concerned police station once in a month i.e. on every 1<sup>st</sup> Monday of the month between 11.00 a. m. to 2.00 p.m.

c) The applicant shall also attend all the dates before the Trial Court.

d) The applicant shall not tamper with the evidence and /or influence the prosecution witnesses.

e) Any two consecutive defaults in comply with the aforesaid conditions, shall attract the provisions of cancellation of bail.

f) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)