

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

CRIMINAL BAIL APPLICATION NO.2284 OF 2017

Baliram Khandu Padir

..Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Sachin H. Deokar for the Applicant.

Mr.Vinod Chate, APP for the Respondent .

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 12th December, 2017**

P.C.:

. This is an application under section 439 of Cr.P.C. The Applicant herein is arrested on 25/5/2016 in Crime No.74/2016 registered at Otur Police Station for the offence punishable under sections 302, 201 read with 34 of Indian Penal Code. The investigation is completed and charge-sheet is filed on 26/7/2016.

2. It is the case of the prosecution that on 28/3/2016 dead body of Chandrakant Budha Sable was seen next to a canal. Report was lodged by police Patil Maruti Dagadu Bhalchim. It was apparent that Chandrakant Sable had died a homicidal death. The brother of deceased Chandrakant viz., Laxman Sable lodged a report on 29/3/2016 against unknown persons. In the course of investigation more particularly on 22/4/2016 it had transpired that the present Applicant had illicit intimacy with the wife of the deceased and that was the motive for eliminating the deceased. Supplementary statement of the complainant was record on 2/6/2016 i.e. after the Applicant was arrested wherein he stated that he had knowledge of the illicit intimacy between the present Applicant and Fasabai, the wife

of the deceased. The papers of investigation further reveal that on the day of incident the original accused No.1 was last seen in the company of the deceased. The original accused No.1 has been enlarged on bail. Similarly, accused No.3 who is the wife of deceased has also been enlarged on bail.

3. Mr.Deokar, Learned counsel for the Applicant submits that although according to the prosecution there is a motive to eliminate the deceased. However, motive by itself would not be sufficient to hold the Applicant liable for the offence punishable under section 302 of IPC.

4. As against this, Mr.Chate, learned APP submits that on 28/5/2016 there is recovery at the instance of the Applicant under section 27 of the Indian Evidence Act. Needle was recovered at his instance. Learned APP submits that the said weapon was used in causing injury No.5 “Incised wound eye lid below orbital bone internally 1 and 1/2 x 1/4 x bony deep upto orbital bone.” It is also submitted that the cause of death is due to cardiorespiratory arrest due to neurogenic shock followed by intracranial bleeding followed by head injury.

5. It is true that there is recovery at the instance of the Applicant. However, the recovery is caused almost after more than 22 days of the alleged incident. Learned counsel for the Applicant submits that the recovery by itself would not make the Applicant liable for the offence punishable under section 302 of IPC as there is no cogent and convincing material to show that the culprit was last seen in the company of the deceased.

6. Taking into consideration that the charge-sheet is filed, investigation is completed and that the co-accused has been enlarged on bail and more particularly accused No.1 who was last seen in the company

of the deceased is enlarged on bail, this Court is inclined to grant bail to the Applicant.

7. The observations made hereinabove are prima facie in nature and shall not be considered for quashing of FIR, discharge application or at the time of trial as they are restricted only to the application under section 439 of the Code of Criminal Procedure. Hence, the order:

ORDER

1. The application is allowed.
 2. Applicant-Baliram Khandu Padir be enlarged on bail on furnishing P. R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
 3. Applicant shall not reside in Junnar Taluka till the conclusion of the trial. Applicant shall attend all the dates before the Trial Court.
- Application stands disposed of.

(SADHANA S. JADHAV, J.)