

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

BAIL APPLICATION NO.2394 OF 2017

Sunil Jagannath Chavan		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Kedar J. Patil for the Applicant.
Mr. S.H. Yadav, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 21st December, 2017

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 9th May, 2017 in Crime No.59 of 2017, registered at Shirol Police Station, for the offences punishable under Sections 302, 201 read with 34 Indian Penal Code. The investigation is completed and the charge-sheet is filed.

3 It is the case of the prosecution that on 5th May 2017, Sou. Lata Rajaram Kamble filed a missing report in respect of her

son, Prashant Kamble. On 9th May, 2017, the dead-body of Prashant was found in the well of Ajit Babu Marsute. Lata Kamble and other family members had identified the same as dead-body of Prashant and on 9th May, 2017, Lata Kamble had lodged a report at the Police Station alleging therein that on 4th May, 2017 at about 8.30 to 8.45 pm., after having dinner, she was chitchatting with her son, Prashant, at that time, Meerasab Nadaf (accused no.1) had been to their house and had invited Prashant to have a dinner. Prashant had disclosed that he had dinner. Thereafter, he was requested to accompany Meerasab atleast to a pan-stall. Prashant went with him and did not return thereafter and hence she was constrained to file a missing complaint on 5th May, 2017. On the basis of the said report, Crime No.59 of 2017 was registered at Shirol Police Station against Meerasab Nadaf and unknown persons punishable under Sections 302, 201 read 34 Indian Penal Code.

4 That Meerasab Nadaf was arrested on 9th May, 2017 and while in remand, Meerasab Nadaf had disclosed that he was good friend of Rahul Dhale, Prashant Kamble, Dinesh Kadam, Akshay Kamble and the present applicant. That he was residing as a neighbour of Prashant Kamble, his room was a meeting place of all the friends. That Rahul and Akshay are the brothers of Ganesh Kamble to whom Vaishali Kamble was married. Vaishali had committed suicide as there was a rumour that she had illicit relations with Prashant. That

Meerasab Nadaf had further disclosed that the present applicant was in the company of Rahul and the other accused on 4th May, 2017. Hence, the present applicant was also arrested.

5 The case rests on circumstantial evidence. It is seen from the records that the present applicant had visited the bar of Raju Ashtekar on 4th May, 2017. The statement of Raju Ashtekar was recorded on 11th May, 2017 and it was seen that the present applicant had visited the said bar alongwith Rahul. Besides this, it is alleged that there is a recovery of motorcycle from the present applicant. However, it is not the case of the prosecution that the motorcycle which was recovered at the instance of the present applicant was used in the commission of the said offence and therefore, it may not have any relevance. There is no cogent evidence, besides the statement of the co-accused and the statement of the bar owner that the present applicant was in the company of the principal accused on 4th May 2017. There is neither any material to indicate that the applicant was last seen in the company of deceased on 4th May, 2017. The prosecution has not recorded the statement of Meerasab Nadaf under Section 164 Cr.P.C., which could be admissible under Section 30 of the Indian Evidence Act. It is, in these circumstances that further incarceration of the applicant would be unwarranted. However, it is made clear that the observations made hereinabove are restricted to the application under Section 439

of Cr.PC. and shall not be taken into consideration for the purpose of discharge application or at the time of trial. Hence, the order.

ORDER

- 1 The application is allowed.
- 2 The applicant be enlarged on bail in Crime No. 59 of 2017, registered at Shirol Police Station, on furnishing P.R. bonds in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.
- 3 The applicant shall not enter into Shahapur, Taluka Hatkanangale till the conclusion of the trial.

(Smt. Sadhana S. Jadhav, J)