

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

BAIL APPLICATION No. 385 OF 2018

Akshay Suresh Kamble

...Applicant

Vs.

State of Maharashtra

...Respondent

Mr. Kedar Jaising Patil for Applicant

Ms. Veera Shinde – APP

Mr. Rajan S. Chavan, ASI, Shirol Police Station, Kolhapur.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE: JUNE 25, 2018

P.C.

1. Heard the learned counsel for the Applicant and the learned APP.
2. This is an application filed under Section 439 of the Criminal Procedure Code. The Applicant herein is arrested on 9th May, 2017 in Crime No. 59 of 2017, registered at Shirol Police Station, for the offence punishable under Sections 302, 201 r/w. 34 of the 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 Bapu 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 p.m., 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 dinner. Prashant had disclosed that he had dinner. Thereafter, he was requested to accompany Meerasab at least 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 Meersab Nadaf and unknown persons punishable under Sections 302, 201 r/w. 34 of the Indian Penal Code.

4. That Meerasab Nadaf was arrested on 9th May, 2017 and while in remand, Meerasab Ladaf had disclosed that he was good friend of Rahul Dhare, 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 for all the friends. That Rahul and Aksahy are the brothers of

Ganesh Kamble to whom Vaishali Kamble was married. Vaishali had committed suicide as there was a rumor 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 along with 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 of Cr.P.C., which could be admissible under Section 30 of the Indian Penal

Code.

6. As far as the present Applicant is concerned, it is the case of the prosecution that there is a recovery of deadly weapon at the instance of the Applicant from the house of his friend Rahul Ekunde. The statement of Rahul was recorded on 12th May, 2017. He had disclosed that he needed the weapon for a marriage ceremony and, therefore, he had called upon the present Applicant and informed him that the weapon which was used for cutting the cake be lent to him for the purpose of marriage. The weapon, therefore, is recovered from the house of Rahul.

7. Needless to say that according to the prosecution the said incident is prior to or on 5th May, 2017 and the dead-body of Prashant was found on 9th May, 2017. It is not the statement of Rahul that there were blood stains or the said weapon was used to assassinate Prashant.

8. The learned counsel for the Applicant submits that the recovery under section 27 of the Evidence Act has been foisted upon the present Applicant. That the statement in the memorandum is hit by Section 25 of the Evidence Act.

9. It is, in these circumstances, the Applicant deserves to be enlarged on bail. It is made clear that the observations made hereinabove are restricted to

the application under Section 49 of the Criminal Procedure Code and shall not be taken into consideration for the purpose of discharge application or at the time of trial. Hence, the order:

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail in Crime No. 59 of 2017 registered at Shirol Police Station, on furnishing P.R. Bond in the sum of Rs.25,000/- and one or more solvent sureties in the like amount.
- (iii) The Applicant shall not enter into Shahapur, Taluka Hatkanangale till the conclusion of the trial.

Bail application stands disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]