

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

BAIL APPLICATION No. 881 OF 2018

Umaji Ganpat Madane	...Applicant
Vs.	
The State of Maharashtra	...Respondent

Mr. Dipak Shivaji Shinde for Applicant
Ms. Veera Shinde -APP

CORAM : SMT. SADHANA S. JADHAV, J.
DATE: JULY 26, 2018

P.C.

1. Heard. This is an application filed under Section 439 of the Criminal Procedure Code.
2. The Applicant herein is arrested on 16th of September, 2017 in Crime No. 174 of 2017 registered at Pusegaon Police Station for the offence punishable under section 302, 109, 143, 147, 149 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 11th September, 2017, one Nitin Devaba Budhavale was taken to Sanjivani Hospital, Pusegaon as he was assaulted by one Amit Nanaso Budhavale and others. Since it was a medico

legal case, statement of Nitin Budhavale was recorded after obtaining opinion of the Medical Officer. He had disclosed to the doctor on 9th of September, 2017 that he was abused by one Akash Budhavale. On 11th September, 2017 at about 5.15 p.m. when Nitin was passing on his motorcycle towards Pusegaon and was passing through Visapur, he was followed by some people from Budhavale Wadi with whom he was acquainted. They had threatened him of dire consequences. The said members of the group were armed with deadly weapons and they had assaulted Nitin. Nitin had sustained several grievous injuries. He had called upon the brother of the present Applicant on his cell phone. Ramesh Madne had admitted him in the hospital.

4. On 12th September, 2017, Manisha- wife of Nanaso Budhavale lodged a report at the police station contending therein that her husband had left the house in the evening at 6.00 p.m. to remove the puncture of his vehicle and has not returned home. A missing report was filed. On 15th September, 2017, the dead body of Nanaso Budhavale was found in the bushes of the forest area in an abandoned condition. The body was in a fully decomposed state as mentioned in the autopsy report. The postmortem notes indicate that the cause of death is asphyxia due to severe tracheae injury and fracture of hyoid bone.

5. On 15th September, 2017, Suraj, son of the deceased lodged a report at the

police station alleging therein that the Applicant and co-accused had assaulted his father. He had seen the assault. He went to his house to inform his mother and when they returned, they could not find his father or the accused persons anywhere in the close vicinity. It is also alleged that on 13th September, 2017, the co-accused had threatened his mother of dire consequences and, therefore, report was not lodged.

6. It is a matter of record that only after the dead body was found, a report is lodged against the accused persons. It is not the case of the first informant that the present Applicant had threatened his mother. The allegations against the present Applicant is that he and Devaba Budhavale had assaulted the deceased with fist and kick blows. The co-accused Kalu Madane has been enlarged on bail by this Court vide order dated 14th June, 2018. Hence, by virtue of doctrine of parity, the Applicant deserves to be enlarged on bail.

7. However, the observations made hereinabove are prima facie in nature and restricted only to the present Application filed under Section 439 of the Criminal Procedure Code and shall not be taken into consideration while deciding the application for discharge or at the time of trial. Hence, the following order:

ORDER

- (i) Bail application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing the P.R. Bond in the sum of Rs.50,000/- and one and more sureties in the like amount.
- (iii) The Applicant shall not reside in the jurisdiction of Pusegaon for three months after his release. However, the Applicant, upon being released on bail, shall give his address, cell phone number and other details to the concerned police station.

Bail application is disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]