

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1191 OF 2018**

Dhananjay Vasant Adhatrao.

.. Applicant.

V/s.

State of Maharashtra

.. Respondent.

Mr. A.P. Mundargi, Sr. Counsel I/b. Mr. Subir Sarkar, advocate for applicant.

Mr. S. R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 11, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1908. The applicant herein is arrested on 1st November, 2017 in Crime No. 846 of 2017 registered at Mohol Police Station, District Solapur. The investigation is completed and charge-sheet is filed on 22/1/2018 for offence punishable under section 302, 201 read with section 120B of the Indian Penal Code.

3 It is the case of the prosecution that the dead body of Santosh

Talwalkar

Adhatrao was found in Shejbabhulgaon shivar. Upon receipt of the said information, the police had gone to the spot. It was the dead body of an unidentified person. The tattoo on his wrist read as 'Santosh Om Shriram'. In the course of enquiry, it had transpired that the said person was one Santosh Adhatrao. It was a case of homicidal death. Hence, Crime No. 846 of 2017 was registered.

4 Thereafter, the statement of Nagesh Chandrakant Adhatrao was recorded. It is alleged by Nagesh Adhatrao that the applicant was enraged as he was made to withdraw his nomination for the election of Pundalik Trust. It is alleged that the friends of the present applicant namely, Santosh Kanare had borrowed some amount from Santosh Adhatrao and that he was being persuaded to return the said amount.

5 The allegation as far as the present applicant is concerned is that he had conspired with Santosh Kanare and had given him a knife to eliminate Santosh Adhatrao. It is pertinent to note that the conclusion drawn in the charge-sheet also is that the applicant had lent a knife to Santosh Kanare. However, the said knife is recovered at the instance of the present applicant under section 27 of the Indian Evidence Act. Besides this, there is no material to indicate that the applicant was last seen in the company of Santosh Adhatrao, although it was Santosh

Kanare who was last seen in the company of the deceased. There is no material to indicate that the applicant was seen in the close proximity of the scene of offence before the incident, at the time of the incident or after the incident.

6 Learned APP submits that the CDR would show that there was a call made by the accused No. 1 to the present applicant soon after the incident which would show that there was a conspiracy between the accused No. 1 and the present applicant. However, it is a matter of record that the time of incident or time of death has not been ascertained by the investigating agency. The post mortem notes only indicate that the death might have occurred within six hours after the last meals. In view of this, the applicant deserves to be enlarged on bail.

7 The observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered for discharge application or at the time of trial.

8 Hence, following order is passed :

ORDER

(i) The application is allowed.

Talwalkar

(ii) The applicant 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.

(iii) The applicant shall not tamper with the evidence.

9 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]