

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

BAIL APPLICATION NO. 9 OF 2018

Vijay Bharat Chavatmahal.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Satyavrat Johsi, advocate for Applicant.

Mr. Y.M. Nakhwa, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 9, 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, 1973. The applicant herein is arrested on 29/6/2017 in Crime No. 163 of 2017 registered with Khadki Police Station for offence punishable under section 302, 201, 504, 323 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 29/6/2017 Ratnamala Kenchi lodged a report at the police station alleging therein that her son was arrested alongwith Vijay Chavatmahal. He was enlarged on bail and the criminal case was pending before the Sessions Court at Pune. On 28/6/2017 the sister of the present applicant had been to the house of the first informant and informed her that the present applicant had been to the Court. However, he has not returned and Nilesh had not reached there. She had requested first informant to send her son Nilesh to the court. In the meanwhile, Nilesh had returned home only to go to the court, as message was left for him by the present applicant. On 29/6/2017 first informant had gone to the house of the present applicant and had informed that although Nilesh had been to the court, he has not returned home. She had asked about the whereabouts of her son Nilesh. The applicant had got irked and had asked her to leave his house immediately. Thereafter, one Chandu Baban Kamble had informed the first informant that sometime ago he had overheard Vijay i.e. present applicant disclosing

his friend that he alongwith Pakya Ovhal and Nitya had eliminated Nilesh on the ground that they were earlier prosecuted only because of Nilesh. He had also overheard the applicant disclosing that the body of Nilesh was thrown from Sangamwadi bridge. Thereafter, she had reached Sangamwadi bridge where she saw police person. That thereafter, she had also learnt about the description of the person who had thrown her son over Sangamwadi bridge. On the basis of this disclosure statement, FIR came to be registered.

4 The applicant was arrested. Supplementary statement of first informant was recorded on 2/7/2017 wherein she has disclosed that initially she had named Chandu Baban Kamble as the person who had informed her. However, she had corrected herself and had stated that the name of the said person to whom extra judicial confession was made was Namdeo Kunjir and not Chandu Baban Kamble.

5 In the course of investigation, police had recorded statement of Namdeo Kunjir on 2/7/2017 wherein he had reiterated that on

28/6/2017 when he had been to meet his niece, he had overheard the applicant informing his friend that he alongwith his friend had eliminated Nilesh.

6 In the course of investigation, statement of one Saurabh Dhokale was recorded wherein he had noted the number of the auto rickshaw, in which, the applicant and his associates allegedly had taken Nilesh to Sangamwadi bridge. He had stated that the registration number of the said auto rickshaw is MH 12 AR 7528. He had tried to contact police immediately by dialing 100 number and therefore, the police had reached the spot. The fire brigade had also reached immediately to search for the dead body. However, the dead body was not found. On the basis of the Registration number of auto-rickshaw, the police had recovered auto-rickshaw from the present applicant. Memorandum was recorded on 2/7/2017 on the basis of which auto-rickshaw was recovered from front of the house of the present applicant.

7 The station diary entry dated 28/6/2017 at booth No. 301 at 6.34 p.m. would show that a call was made to the police station informing therein that a person was thrown over board from Sangamwadi Bridge near COEP Boat Club, Engineering College. The number of the accused was also recorded. In fact, it was registration number of the auto-rickshaw. In fact, the register of the police station would show that at 6.36 p.m. the police, soon after they received the message, had left for Sangamwadi bridge. At that time, they had noted the registration number of rickshaw as MH 12 AR 7528. The fact that registration number of the rickshaw which was noted by the independent witness was informed to the police immediately and in the course of investigation, the same was recovered at the instance of the applicant would clearly establish the complicity of the applicant in the said offence.

8 In view of the above mentioned facts, the application being sans merits stands rejected.

9 However, the observations made hereinabove are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration at the time of trial.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)