

13- BA 40 of 2018

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

BAIL APPLICATION No. 40 OF 2018

Mr. Somnath Laxman Jadhav

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Chaitanya Sakhare for Applicant

Ms. Veera Shinde-APP

CORAM : SMT. SADHANA S. JADHAV, J.
DATE: JUNE 20, 2018

P.C.

1. Heard. This is an application under section 439 of the Criminal Procedure Code. The Applicant herein is arrested on 5th January, 2017 in Crime No. 1 of 2017 registered at Wathar Police Station for the offence punishable under Section 302, 201 r/w. 34 of the Indian Penal Code.
2. It is the case of the prosecution that on 1st January, 2017, Umaji Rathod, father of Sanjay lodged a report at the police station alleging that on 30th December, 2016, he was trying to call his son Sanjay. However, there was no reply. That he had made inquiries and in the course of inquiry, it was revealed

that one Laxman Pandu Rathod gave a call to father-in-law of Sanjay and had informed that Gopal Kisan Rathod had called him on his cell phone and informed that they had eliminated Sanjay and that they had thrown him in the well and he asked Laxman to find out the dead body of Sanjay in the well. He had given a location of the well. On the basis of the said information, they had undertaken a search and then the dead-body of Sanjay was found in the well on the next date. Autopsy was conducted on the dead-body of Sanjay and it was revealed that it is a case of homicidal death as his wrists were tied to a stone and there were lacerations. That thereafter, the statement of Laxman Babu Rathod was recorded on 14th January, 2018 and he had disclosed that Laxman Pandu Rathod had called him on his cell phone and informed that on 29th December, 2017 he was in the company of Sanjay as well as the present Applicant. That they were initiating to go to Daund. On the way, they had consumed alcohol and had dinner. Thereafter, when Sanjay went to answer nature's call, he asked the Applicant to stop the motorcycle. At that time there was some quarrels amongst them. In the midst of the quarrel, Sanjay had fallen in the well and, thereafter, the co-accused and the Applicant had jumped into the well and they had taken away his Sim card and, then, they had assaulted him and eliminated him and then made a call in the police station that Sanjay had

fallen in the well. Then police had reached the spot.

3. It is pertinent to note that the postmortem notes indicate as follows:

“Right hand flexed at elbow joint and rest over the chest tied over the wrist and chest by T-Shirt. 3 to 4 knots over chest. Fingers are flexed. No sand or earth in it. Left hand mildly flexed at elbow joint. Fingers flexed beside the body. Both legs slightly flexed at knee. CLW over face just below right eye 5 x3x2 cms. Abrasions over face right side from right eye to lower border of mandible. CLW over neck just below the chin 5x3x1 cm. Laceration over the abdomen, over the chest etc. There were fractures to the body.”

4. The case rests upon the extra judicial confession of the co-accused which is exculpatory in nature. The postmortem report notes corroborate the contentions of the confession made to Laxman Babu Rathod.

5. The learned counsel for the Applicant submits that there is variance in the statements of witnesses. It is submitted that it appears that there were no calls from the phone of Sanjay to the police.

6. It appears from the papers of investigation that the Applicant and the co-accused were last seen in the company of the deceased. The extra judicial confession is made is voluntary and needs to be believed at this stage. There is no material to indicate that the same can be doubted at this stage. Hence, no

case is made out by the Applicant for enlarging him on bail.

The bail application stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]