

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

**BAIL APPLICATION NO.72 OF 2018**

|                          |      |            |
|--------------------------|------|------------|
| Kautik s/o Walmik Nikam  | .... | Applicant  |
| <u>Vs.</u>               |      |            |
| The State of Maharashtra | .... | Respondent |

Ms. Avanti Inamdar h/for Mr. Rameshwar N. Gite for the Applicant.  
Ms. P.P. Shinde, APP for the State.

***Coram : Smt. Sadhana S. Jadhav, J.***  
***Date : 5<sup>th</sup> February, 2018***

P.C.:

1            Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2            This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 19<sup>th</sup> July 2017 in Crime No.175 of 2017, registered at Malegaon Taluka Police Station, for the offences punishable under Sections 302, 201 and 120(B) Indian Penal Code. The investigation is completed and the charge-sheet is filed against the present applicant. The applicant happens to be the original accused no. 3. The accused no. 1 has been enlarged on bail.

3           It is the case of the prosecution that one Nimba Sukdeo Nikam was an alcoholic. He had left his house on 12<sup>th</sup> December 2016. His family members and relatives had searched for him at all places and finally on 24<sup>th</sup> December 2016, a missing complaint was lodged. In the course of investigation, on 14<sup>th</sup> July 2017, an unidentified dead-body was found in the well of Dadaji Kautik Nikam. Initially the dead-body could not be identified. It was in a decomposed state. Subsequently, the dead-body was identified as that of Nimba Nikam.

4           In the course of investigation, it is revealed that the original accused no.1 Ashabai Nimba Nikam was having illicit intimacy with one Suresh Mahadu Nikam. The present applicant Kautik happens to be resident of the same village. In the course of investigation, the statements of the relatives were recorded and it had transpired that deceased was an alcoholic and he used to trouble his wife and demand money from her. That it had transpired that the accused no.1 had strangulated her husband while he was in intoxicated state of mind. That there was some whisper amongst the villagers that the wife of the deceased had with connivance of the present applicant and Suresh Mahadu Nikam had tied the dead-body and had thrown it in the well of Dadaji.

5            Learned counsel for the applicant vehemently submits that there is no cogent material even remotely to implicate the present applicant or any material to show the role of the accused in the homicidal death of Nimba. Firstly, the dead-body was found after more than six months. There is no evidence of last seen together. It was only on the basis of the suspicious movement and conduct of original accused no.1. That family members had suspected that the accused persons have caused the homicidal death of Nimba. Upon perusal of the papers of investigation, it cannot be said that the prosecution would be able to substantiate the allegations. The case rests upon circumstantial and hearsay evidence. In view of this, the applicant deserves to be enlarged on bail.

6            The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

### **ORDER**

1            The application is allowed.

2            The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

3           The applicant shall report to Malegaon Taluka Police Station on first Sunday of each month between 10.30 to 12.00 noon till framing of the Charge.

( *Smt. Sadhana S. Jadhav, J*)