

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

BAIL APPLICATION No. 398 OF 2018

Aakash Suresh Bhatkar

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. Aniket Nikam i/b. Mr. Aashish Satpute for Applicant

Mr. Y.Y. Dabake-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.

2. The Applicant herein is arrested on 5th June, 2017 in Crime No. 198 of 2017 registered at Sinhgad Road Police Station for the offence punishable under Section 302, 109, 114, 201, 120-B r/w. 34 of the Indian Penal Code. The investigation is completed and the charge-sheet is filed.

3. It is the case of the prosecution that one Avinash Akhade was in love with Ms.'X'. She happens to be the daughter of Namdeo Sasane. Avinash was

butchered to death on 4th June, 2017. On the same day, his father Nilu Akhade lodged a report at the police station alleging therein that they belong to Dhangar Community and that his son had studied upto 7th Std. He is the resident of Village Sanaswadi. That his son was in love with Ms. 'X' and, therefore, there was a dispute between both the families as they were against the said relationship. Her parents had convinced her that she should marry some other boy of the same caste but Ms. 'X' wanted to marry Avinash and the issue was aggravated. That one Pravin and Tushar, Original Accused Nos. 2 and 3, happen to be the real brothers of Ms. 'X', who were aggrieved with the said relationship. They used to harass Avinash on several occasions. On 4th of June, 2017, Avinash had left his house to go to Dhayari on his motorcycle. The complainant had tried to call his son. However, the call was not answered. In the meanwhile, he had learnt from the neighbor that Avinash has been killed.

4. The FIR was lodged against Pravin and Tushar, Roshan and others. The Applicant herein, who was closely associated with Sanas family, was arrested on 5th June, 2017. On the same day, the statement of Pratiksha was recorded i.e. on 5th June, 2017 and she had disclosed that her brothers were enraged due to her love relationship with Avinash. That on 6th June, 2017, the investigating officer had recorded the statement of Tanaji Sanas, who had disclosed that on

4th June, 2017, Avinash had visited his house and had informed him that Vishal Sanas had invited him at Raykar Mala. Tanaji, Vishal Sanas and Avinash had consumed alcohol. When Tanaji was in the company of Avinash, Mukund was calling upon him to find out the location. Pravin and Tushar had assaulted Avinash with sickle and stone. After the assault, they left the scene of offence. At that place, the present Applicant was waiting with Mukund Sanas on a motorcycle and Mukund had asked Tanaji and Vishal to leave the spot immediately. Similarly, the statement of Vishal Sanas was recorded .

5. On 1st of August, 2017, the investigating agency had recorded the statement of one Ganpat Barku Tupe, who had disclosed that Ms. 'X' was threatened by her family. That on 3rd of June, 2017, he had seen the present Applicant in the company of Sanas brothers where they were hatching the conspiracy to eliminate Avinash. Ganpat Barku has disclosed that Mukund was instructing everybody that under any circumstances Avinash has to be eliminated on the next day. That he along with Akash i.e. the present Applicant would call Avinash near Mauli Bungalow and Saurabh and Dhananjay would wait at Nanded Phata and Roshan would be on the lookout. Ganpat had questioned about their activity and at that time, Mukund had disclosed that one person has to be eliminated. Ganpat had, thereafter, maintained silence as he

was not concerned. It is pertinent to note that his statement was recorded on 1st August, 2017 i.e. practically after two months after the arrest of the present Applicant.

6. It is pertinent to note that Pratiksha Sanas was threatened by her father and brother that in the eventuality she keeps in contact with Avinash, they would not hesitate to eliminate her as well as Avinash. She used to contact him through her friend Kajal. She was in touch with him. There is no reference to the present Applicant.

7. The learned APP submits that the statement of Ganpat Barku Tupe be considered and the application of the present Applicant be rejected as it would amount to incriminating material under Section 120B of the Indian Penal Code. The material as far as the recovery under section 27 of the Indian Evidence Act is concerned, can be considered at the time of trial.

8. Prima facie, the involvement of the Applicant in causing homicidal death of Avinash is not established. The Applicant is hardly 20 years' old and, he has been in custody for more than 2 years. Hence, the applicant deserves to be enlarged on bail. The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial. Hence, the following order:

ORDER

- (i) Application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing P.R. Bond of Rs.50,000/- and one or more sureties in the like amount.
- (iii) The Applicant shall not reside in Taluka Haveli till the conclusion of the trial.

Application stands disposed of in the aforesaid terms.

[SMT. SADHANA S. JADHAV, J.]

Vaishali
Anil
Tikam

Digitally signed
by Vaishali Anil
Tikam
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2018.07.12
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