

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

BAIL APPLICATION NO.500 OF 2018

Tausif Yunus Mujawar		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Aniket U. Nikam I/by Mr. Aashish Satpute for the Applicant.
Mr. N.B. Patil, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 13th July, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 18th March 2016 in Crime No.73 of 2016, registered at MIDC Bhosari Police Station for the offences punishable under Sections 363, 364, 302, 201,120(B) of the Indian Penal Code.

3 The earlier application was withdrawn before Honble Shri. Justice T.V. Nalawade, when the Court was not inclined to grant bail. The present application is filed mainly on the ground that by virtue of doctrine of parity, the applicant deserves to be enlarged on bail.

4 It is the case of the prosecution that on 10th March 2016, Ajinath Manik Pagare lodged a report at the police station alleging therein that on 9th March 2016, his son Pathmesh had been to Urus at village Moshi alongwith his friend Pappu Mohalkar. At about 10.00 pm., he returned home. He had received a phone call from one person to whom he had informed that since his parents were sleeping, he would meet the caller on the next day morning. That the mother of Prathmesh was enquiring with him and at that time he had told her that there are some boys outside the house and therefore she should speak softly. After some time, he had locked the house from outside and had accompanied his friends. At midnight, the first informant had realised that his son had not returned home and therefore he enquired with all his friends about

the whereabouts of his son. He was rest assured that his son had been abducted and therefore he lodged a report against unknown persons. On the basis of the said report, Crime No. 73 of 2016 was registered against unknown persons for the offences punishable under Section 363 of Indian Penal Code.

5 On 12th March 2016, one Dheeraj Kudale was arrested on the ground of suspicion as it had transpired in the course of investigation that there used to be frequent quarrels between Dheeraj Kudale and Prathmesh Pagare. It had also transpired that the sister of Dheeraj Kudale was in love with Prathmesh Pagare and on that ground also Prathmesh was being threatened of dire consequences not only by Dheeraj Kudale, but by his friends also. Dheeraj Kudale was called to the police station for the purpose of enquiry. He succumbed to the interrogation by the police officers and had submitted that he alongwith Ajay Rathod caused homicidal death of Prathmesh. On 12th March 2016, the parents of Prathmesh were called to Vadgaon near bank of Bhima river. People had gathered on the spot. The police was also present. Dheeraj was brought by the

police. In the presence of the parents of Prathmesh, Dheeraj had disclosed that he alongwith Ajay Rathod had called Prathmesh. They had then strangulated him with a handkerchief and thereafter they had thrown a large stone on the chest of Prathmesh. He also showed the spot from where they had thrown the dead-body of Prathmesh in the river. Pursuant to the disclosure statement made by Dheeraj, the police had called for a crane and they had pulled the dead-body out of the water. The said body was identified by the parents of Prathmesh to be that of Prathmesh. Needless to say that the dead body of Prathmesh was discovered at the instance of Dheeraj who had admitted that he along with Ajay Rathod had caused the homicidal death of Prathmesh and had carried the same on the motorcycle and had thrown it in Bhima river.

6 The only incriminating material against the present applicant is the statement of one Rajendra alias Deepak Gosavi, which shows that the applicant was present and participated in the discussion in which the conspiracy was hatched to eliminate Pagare. The said conspiracy was allegedly hatched in the house of Rajendra

Gosavi and therefore he had overheard the said conversation. The applicant was arrested on 18th March 2016 and the statement of Rajendra Gosavi is recorded on 20th April 2016.

7 The learned APP submits that there is recovery of a rope at the instance of accused Ashish Shah. There is recovery of blood stained clothes at the instance of Kiran Gaikwad. The learned counsel rightly submits that the incident has occurred in the intervening night of 9th and 10th March and the clothes are recovered after more than 2 weeks. It is pertinent to note that the deceased had not sustained bleeding injury. Column no. 17 of the post mortem notes would indicate that the deceased was strangled. There are contusions and Imprint abrasion on his neck, below thyroid cartilage which would indicate that he was strangled. There was no reason to have any blood stains on the clothes of the accused persons at the time of incident. Be that as it may, as far as accused- Sudarshan Aagleme is concerned, it appears that he has been arraigned as an accused subsequently due to the statement of Dheeraj Kudale which was recorded while he was in police custody.

8 Kiran Chandrakant Gaikwad is enlarged on bail by this Court vide order dated 14th December 2016. It is often seen that the material collected in the course of investigation under Section 27 of the Indian Evidence Act is such that it cannot be converted into admissible evidence. In fact recovery and discovery under Section 27 of the Indian Evidence Act should be such that it inspires confidence of the Court. In the present case, the dead-body is discovered at the instance of Dhiraj would inspire the confidence of the Court, but not as far as Kiran Gaikwad or the present applicant.

9 Upon considering the papers of investigation and submissions advanced, this court is of the opinion that the applicant has made out a case for grant of bail.

10 The observations are prima facie in nature and shall not be considered for discharge application or at the time of trial. Hence, the order :

ORDER

- i) The application is allowed.
- 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 enter the jurisdiction of MIDC Bhosari police station and village Moshi Taluka Haveli, District Pune till conclusion of trial.
- iv) The applicant shall report to the concerned police station on first and third Sundays of each month till framing of charge.
- v) In the eventuality that he fails to attend any two consecutive dates, the prosecution would be at liberty to file an application under Section 439 sub-clause (2) of Cr.P.C.

(Smt. Sadhana S. Jadhav, J)