

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

**BAIL APPLICATION No. 521 OF 2018**

**Kalu Bhagwan Madane**

**...Applicant**

**Vs.**

**State of Maharashtra**

**..Respondent**

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Mr. A.P. Mundargi, Senior Counsel i/b. Mr. Shailesh D. Chavan for Applicant  
Mr. S.R. Agarkar -APP for the State

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**CORAM : SMT. SADHANA S. JADHAV, J.**

**DATE: JUNE 14, 2018**

**P.C.**

1. Heard. This is an application filed under Section 439 of the Criminal Procedure Code.
2. The Applicant herein is arrested on 16<sup>th</sup> of September, 2017 in Crime No. 174 of 2017 registered at Pusegaon Police Station for the offence punishable under section 302, 109, 143, 147, 149 of the Indian Penal Code. The investigation is completed and the charge-sheet is filed.
3. It is the case of the prosecution that on 11<sup>th</sup> September, 2017, one Nitin Devaba Budawale was taken to Sanjivani Hospital, Pusegaon as he was assaulted by one Amit Nanaso Budawale and others. Since it was a medical

case, statement of Nitin Budawale was recorded after obtaining opinion of the Medical Officer. He had disclosed to the doctor on 9<sup>th</sup> of September, 2017 that he was abused by one Akash Budawale. On 10<sup>th</sup> September, 2017, at about 8.00 a.m. Akash's brother Babu Budawale had also abused Nitin after threatening him of dire consequences. On 11<sup>th</sup> September, 2017 at about 5.15 p.m. when Nitin was passing on his motorcycle towards Pusegaon and was passing through Visapur, he was followed by some people from Budawale Wadi with whom he was acquainted. They had threatened him of dire consequences. The said members of the group were armed with deadly weapons and they had assaulted Nitin. Nitin had sustained several grievous injuries. He had called upon the brother of the present Applicant on his cell phone. Ramesh Madne had admitted him in the hospital.

4. On the basis of the said statement, Crime No. 169 of 2017 was registered at Pusegaon Police Station for the offence punishable under Section 307, 504, 506, 143, 147, 148, 149 of the Indian Penal Code and section 3 r/w. Section 25 of the Indian Arms Act. The Applicant herein had endorsed upon the statement of Nitin as a witness.

5. On 12<sup>th</sup> September, 2017 Manisha, who happens to be the mother of Amit Budawale, lodged a report at the same police station contending therein

that her husband had left the house in the evening at 6.00 p.m. to remove the puncture of his vehicle and has not returned home. She had made inquiries with the neighbors and as he was not found, she had approached the police station. The said report was treated as a missing report. On 15<sup>th</sup> of September, 2017, the dead body of Nanaso Budawale was found in the bushes of the forest area in an abandoned condition. The body was in a fully decomposed state as mentioned in the autopsy report. The postmortem notes indicate that the cause of death is respirations asphyxia due to severe tracheae injury and hyoid bone fracture.

6. On 15<sup>th</sup> September, 2017, Suraj, who happens to be the son of deceased Nanaso Budawale lodged a report at the police station that on 11<sup>th</sup> of September, 2017 there was some altercation between Nitin Budawale and others. The name of his brother Amit was shown as one of the accused and, therefore, on 11<sup>th</sup> September, 2017, at about 6.30 pm. When he was returning home with his father, at the behest of the present Applicant and his brother Ramesh, 7 to 8 had assaulted his father. He rushed home to inform about the incident to his family members. When he returned, he did not find his father or any other accused on that place. They had searched for his father. On the next day, i.e. on 12<sup>th</sup> September, 2017 his mother and wife of deceased Nanaso -

Manisha lodged a report at the police station. She had not disclosed the name of the present Applicant and the other accused since she was scared of them. Her report was treated as missing report and the investigation was set in motion.

7. According to the complainant, on 13<sup>th</sup> September, 2017, the present Applicant, his brother and others had threatened his mother with dire consequences and, therefore, no report was lodged in respect of the said threaten and only on the basis of first information, which was lodge in the police station and only after the dead body of Nanaso was found in the forest area in a decomposed state, the present FIR is lodged. It is clear from the first information report that the present Applicant was not present on 11<sup>th</sup> September, 2017 at 6.30 p.m. along with other accused. It was only on 13<sup>th</sup> September, 2017 that he had extended a threat to the mother of the complainant. There was no complaint about the same nor the threat was reported to the police and police has treated the said complaint as missing report.

8. Prima facie it appears that there is some suppression of facts while reporting the case to the police station. Moreover, the mother of the first informant had made a report about missing of her husband. She has stated to the police that she had sent her two sons Suraj and Amit for searching of her

husband, which would prima facie indicate that Suraj was not eye witness of the incident which had taken place at 6.30 p.m. on 11<sup>th</sup> September, 2017.

9. Taking into consideration the above mentioned facts and the submissions made across the bar, this Court is of the opinion that the Applicant deserves to be released on bail. However, the observations made hereinabove are prima facie in nature and restricted only to the present Application filed under Section 439 of the Criminal Procedure Code and shall not be taken into consideration while deciding the application for discharge or at the time of trial. Hence, the following order:

### **ORDER**

- (i) Bail application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing the P.R. Bond in the sum of Rs.50,000/- and one and more sureties in the like amount.
- (iii) The Applicant shall not reside in the jurisdiction of Pusegaon for three months after his release. However, the Applicant, upon being released on

bail, shall give his address, cell phone number and other details to the concerned police station.

Bail application is disposed of in the aforesaid terms.

**[SMT. SADHANA S. JADHAV, J.]**