

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

**BAIL APPLICATION NO.714 OF 2018
ALONGWITH
CRIMINAL APPLICATION NO.398 OF 2018**

Nilesh @ Nanu Chandrakant Kurlap Applicant

Vs.

The State of Maharashtra Respondent

Mr. A.P. Mundargi, Senior Counsel i/by Mr. Satyam H. Nimbalkar
a/w Mr. S.S. Shah for the Applicant.

Mr. S.R. Agarkar, APP for the State.
Mr. Ganesh Bhujbal for Intervenor.
Mr. A.B. Pakhale, PC, Shirur Police Station.

***Coram : Smt. Sadhana S. Jadhav, J.
Date : 26th June, 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 1st September 2016 in

Crime No. 514 of 2016, registered at Shirur Police Station for the offences punishable under Sections 302, 143, 147, 148, 149, 109, 120(B) 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 28th August 2016, Mahendra Hiranman Mallav was killed. His nephew Ganesh Jaysingh Mallav lodged a report at the police station alleging therein that on that day at about 2.30 pm., he was in the shop. When he saw his uncle Mahendra coming on a motorcycle, he had seen four persons namely Pravin Prakash Kale, Sunny Sanjay Yadav, Ajay Kaluram Jadhav etc. who were brutally assaulting his uncle. It is alleged that on 30th May 2016, his uncle Mahendra had opposed the birthday ceremony of the present applicant and therefore the present applicant alongwith Ganesh Kurlap hatched conspiracy and therefore eliminated Mahendra.

4 Ganesh Chandrakant Kurlap has been enlarged on bail by an order dated 20th July 2017 by this Court (Coram : Revati Mohite

Dere, J.). The learned Senior Counsel has drawn attention of this Court to the statement of Suryakant Chaudhari recorded on 29th August 2016. According to the said witness, on 20th August 2016 at about 2.00 to 2.15 pm., he was proceeding on motorcycle to deliver fish to his mother. On the road, he had received an information from Ganesh Mallav i.e. the informant that Mahendra died of homicidal death. He was therefore proceeding towards Sarvoday Hospital. On the way, he had seen Rupesh Luniya on his motorcycle. Sunny Yadav, one of the assailant was the pillion rider. It is alleged that Sunny was brandishing blood stained weapon. He had also seen Pravin Kale on another motorcycle. Nilesh @ Nanu Kurlap i.e. the present applicant had passed by him on the motorcycle and the pillion riders were Ganesh and Ajay.

5 According to the prosecution, the present applicant had caused homicidal death of Mahendra at the hands of the assailants and had also harboured them. Learned Senior Counsel submits that in fact Ganesh has stated in the F.I.R. itself that while leaving the scene of offence, he had seen four persons on two respective

motorcycles with one pillion rider each. Therefore, according to the learned Senior Counsel, there was no scope for the applicant driving the motorcycle with Ganesh and Ajay who happened to be one of the assailant. Needless to reiterate that Ganesh Kurlap has been enlarged on bail by this Court. Learned APP submits that the present applicant had conspired with the assailants and therefore has been charged under Section 120(B) of Indian Penal Code. According to the learned APP, the present applicant had hatched conspiracy at Hotel Savera. The said incriminating material is considered and discussed in the order granting bail to Ganesh Kurlap. It is submitted that the applicant has been falsely implicated. The objections to the celebrations of the birthday of the present applicant was in the month of May 2016 and the present incident is dated 20th August 2016. In the interregnum there were no skirmishes between the present applicant and the deceased or his nephew, at any point of time to establish that the applicant had nurtured the motive to eliminate Mahindra. Learned APP has further submitted that there are criminal antecedents against the present applicant and he has

been prosecuted in several cases for the offences punishable under Sections 324 and 506 of Indian Penal Code. In Crime No. 33 of 2013, he is charge-sheeted for the offences punishable under Sections 307, 341, 141, 142, 143, 147, 149 Indian Penal Code. Rest of the offences are registered under Sections 324, 504, 506 of Indian Penal Code. Considering the role attributed to the applicant and that the said material cannot be treated as incriminating material, the applicant deserve to be enlarged on bail.

6 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.1,00,000/- with one or more solvent sureties in the like amount.

iii) The applicant shall not reside in Shirur till the conclusion of the trial.

iv) The applicant shall furnish his latest place of residence and cell-phone number and/or change of residence or mobile details if any, from time to time to the Police.

v) That within two weeks of being released on bail, the applicant shall give an undertaking to Shirur police station as well as to the Sessions Court in Sessions Case No. 88 of 2017 that he would attend each and every dates at the time of trial in Pune.

vi) Upon failure to attend any two consecutive dates, the prosecution would be at liberty to file an application under Section 439(2) of Cr.P.C.

The Intervention Application is heard, allowed and disposed of.

(Smt. Sadhana S. Jadhav, J)