

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1174 OF 2018**

Nikhil @ Buntty Balasaheb Bibawe. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

WITH

CRIMINAL BAIL APPLICATION NO. 1069 OF 2018

Ravi Dnyaneshwar Botre. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Aniket U. Nikam I/b. Mr. Aashish Satpute, advocate for applicant in BA 1174 OF 2018.

Ms. Shubhangi P. Parulekar I/b. Mr. Ravindra S. Pachundkar, advocate for applicant in BA 1069/18.

Ms. Veera Shinde, APP in BA 1174/18.

Mr. Vinod Chate, APP in BA 1069/18.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 25, 2018.

P. C. :

1 These are the applications under section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested on 29/6/2017 in Crime No. 312 of 2017 registered at Bharti Vidyapeth

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Police Station, District Pune for the offence punishable under section 302, 201 read with section 34 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

2 Heard respective Counsel and learned APP. Perused the papers of investigation.

3 It is the case of the prosecution that on 29th June, 2017 one Himmatrao Bhoite working as security watchman at Nancy Lake Home Society informed the police that on that day in the morning at 8.30 a.m. he had seen an abandoned dead body of a male person lying in the open area adjacent to the Nancy Lake Home Society. It was a case of homicidal death and the face of the deceased was smashed in order to cause disappearance of identity of the deceased. On the basis of the said report, an offence under section 302 of the Indian Penal Code was registered against the unknown person.

4 On 29/6/2017 one Mr. Anna Manohar Mahadik had been to Bibwewadi Police Chowki to file missing report in respect of his son Amar Mahadik and at that time, police had shown him the photograph of the deceased, information of which they had received from Bharati Vidyapeeth Police station. Mr. Mahadev was taken to morgue and there, he had identified the dead body of his son Amar. The statement of Anna

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Mahadik was recorded and he had disclosed to the police that his daughter Ms. X was studying in Rajarshi Shahu College, Laxmi Nagar. That the parents had learnt from reliable sources that she had been in love with one boy named Radhikesh Pawar. However, subsequently, his daughter Ms. X had lodged complaint against Radhikesh Pawar. Police in order to ascertain the fact, called upon Radhikesh Pawar as well as the parents of Ms. X. In the presence of the police, father of Ms. X had enquired with Radhikesh whether he would marry her and he at that juncture refused to marry her. However, in the month of March Radhikesh Pawar had been to the house of Anna Mahadik in an intoxicated state of mind and had submitted to Anna Mahadik that he loves his daughter and that he desires to get married to her. However, Ms. X who seemed to be hurt, had specifically stated that she does not wish to get married to Radhikesh. At that time, while leaving the house, he had threatened Ms. X that if she refuses his proposal he would not hesitate to eliminate either her father or brother. Thereafter, several time Ms. X had to go to police station and file reports against Radhikesh Pawar. One day, he had been to the hospital where she was working as nurse and had threatened her of dire consequences. On 17/5/2017 also he has visited her work premises and at that time, she was constrained to call upon her brother Amar. At that place, there was an altercation between Amar and Radhikesh Pawar and he had threatened her that he

would definitely eliminate her father or brother.

5 On 29/6/2017 at about 4 p.m. Amar had left his house in the car of Shrikant Dodmani as he was working as a driver on the said car. Subsequently, they had learnt that the said car i.e. Maruti Suzuki Siaz car No. MH 12 NB 1384, which was driven by Amar, was parked at Bharat Jyoti Bus Stop. They had checked C.C.T.V. footage and had seen that it was Radhikesh Pawar who had parked the car at the said spot and he had left on the motor cycle of Nikhil Bibwe. It is in these circumstances that the accused were traced and arrested.

6 In the course of investigation, the investigating officer had recorded statement of Yogesh Bhangе, resident of SRA Society who happens to be the neighbour of the present applicant. He had disclosed to the police that on 29/6/2017 present applicant was in the company of the witness. When the applicant was in the house of the witness, Radhikesh Pawar had been to their house and had called upon the present applicant and on the pretext of bringing tiffin, had taken the applicant alongwith him. The applicant had accompanied him and had returned within 15 minutes. The neighbours and parents of the present applicant had enquired with him as to whether he had been with Radhikesh Pawar and incidentally, the applicant had disclosed that

Radhikesh and his friend Nikhil had a quarrel with other boy. They had taken him to the spot. At that juncture, he had slapped other boy 2 to 3 times and left the boys by themselves. He had specifically stated that Radhikesh Pawar and Nikhil are assaulting that boy. To ascertain the information given by the Applicant, Yogesh Bhangе and Tanaji Pawar had been to the circle, but by then, nobody was seen. That on 29/6/2017 Radhikesh Pawar had again visited the house of the applicant. The mother of the applicant had specifically informed Radhikesh not to call her son or take him. However, thereafter, the applicant, Yogesh Bhangе, Tanaji Pawar and Amit Shaikh had been to the house of Radhikesh and at that time, they had seen that Jerkin worn by Radhikesh was stained with blood. Upon enquiry, Radhikesh had disclosed to all of them that he alongwith Nikhilesh had caused homicidal death of Amar. Radhikesh continued to drink Alcohol thereafter, when the witnesses and the applicant were in the same house, his friend Bunty had come to call upon Radhikesh. Radhikesh was instructed to present the clothes handed over by Bunty to him. The applicant in Criminal Application No. No. 1174 of 2018 had also informed Radhikesh that his watch was lying on the spot where they had assaulted Amar. He had brought the cell phone of Amar.

7 The statement of Yogesh Bhangе appears to be genuine and

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would inspire confidence of the Court. There is material to indicate that Radhikesh Pawar and Nikhil Bibwe were assaulting Amar Mahadik and the applicant was witness. Yogesh Bhange and others were also led by Ravi Botre to the spot. It appears from the post mortem notes that Amar was brutally assaulted. There are as many as 30 injuries on the person of deceased. There are more than 5 incised wounds. Soon after the incident, the applicant Nikhil Bibwe was seen in the company of Radhikesh Pawar and they had left the car at unknown spot and Radhikesh accompanied Nikhil. Their images while parking the car are captured in C.C.T.V. footage.

8 Learned APP submits that watch of the applicant Nikhil was found at the spot of the incident. In view of this, the application of Ravi Botre deserves to be allowed. However, the application of Nikhil Bibwe deserves to be rejected.

9 The observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be considered for discharge application or at the time of trial.

10 Hence, following order is passed :

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ORDER

- (i) The application No. 1174 of 2018 is rejected.
 - (ii) The Bail Application No. 1069 of 2018 is allowed.
 - (iii) The applicant Ravi Dnyaneshwar Botre be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more solvent sureties in the like amount.
 - (iv) The applicant Ravi Botre shall report to the concerned police station on 1st Sunday of each month till framing of charge.
- The applicant shall not tamper with the evidence.

11 The applications are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Aruna Sandeep
Talwalkar

Digitally signed by Aruna
Sandeep Talwalkar
Date: 2018.07.31 13:03:18
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