

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1522 OF 2018**

Dinesh Kailash Kadam. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Kedar Jaysing Patil, Advocate for applicant.

Mr. N.B. Patil, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 1, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 10/5/2017 in Crime No. 59 of 2017 registered at Shirol Police station, 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.

3 It is the case of the prosecution that on 5th May, 2017, Sou. Lata Rajaram Kamble filed a missing report in respect of her son, Prashant Kamble. On 9th May, 2017, the dead body of Prashant was

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found in the well of Ajit Bapu Marsute. Lata Kamble and other family members had identified the same as the dead body of Prashant and on 9th May, 2017, Lata Kamble had lodged a report at the police station alleging therein that on 4th May, 2017 at about 8.30 to 8.45 p.m., after having dinner, she was chitchating with her son, Prashant, at that time, Meersab Nadaf (accused No. 1) had been to their house and had invited Prashant to have dinner. Prashant had disclosed that he had dinner. Thereafter, he was requested to accompany Meersab at least to a pan-stall. Prashant went with him and did not return thereafter and hence, she was constrained to file a missing complaint on 5th May, 2017. On the basis of the said report, Crime No. 59 of 2017 was registered at Shirol Police Station against Meersab Nadaf and unknown persons for offence punishable under section 302, 2101 read with section 34 of the Indian Penal Code.

4 The applicant herein claims enlargement on bail by virtue of doctrine of parity. By an order dated 25th June, 2018 passed in favour of Akshay Suresh Kamble, this Court has observed that the case rests on circumstantial evidence. There is no recovery at the instance of the present applicant.

5 It appears that Meersab Nadaf is arrested in Crime No.

59/2017 on 9th May, 2017 and while in remand he had disclosed that the present applicant and Akshay Kamble had been his good friends. That Vaishali Kamble was married to Ganesh Kamble. She had committed suicide as there was rumour that she had illicit relations with Prashant. The only material against the present applicant is that he was in the company of Rahul and other accused on 4th May, 2017. Rahul appears to be the principal accused in the present case. It is not the case of the prosecution that the deceased was last seen in the company of the present applicant. Moreover, the statement of Meersab Nadaf is not recorded under section 164 of the Code of Criminal Procedure, 1973 and hence, it cannot be used under section 30 of the Indian Evidence Act. In view of this, by virtue of doctrine of parity and also on merits, the applicant deserves to be enlarged on bail.

6 The observations are prima facie and restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge application or at the time of trial.

7 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in

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the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.

(iii) The applicant shall not enter into Shahapur, Taluka Hatkanangale till conclusion of the trial.

(iv) The applicant shall communicate his place of residence and contact numbers to the concerned police station after his release on bail.

(v) The applicant shall not tamper with the evidence.

8 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Aruna
Sandeep
Talwalkar

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by Aruna Sandeep
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