

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 2224 OF 2017***

Shri Kundalik Yashwant Kolekar

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.Rahul Sopanrao Kate, for the applicant.

Mrs. Veera Shinde,APP, for the State.

Mr. S.S.Charane, H.C. Vadgaon Police Station, Kolhapur.

CORAM : SMT. SADHANA S.JADHAV, J.

DATE : 18th January, 2018.

P.C. :

1. Heard. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant herein is arrested on 6.4.2017 in C.R. No.87 of 2017 registered at Vadgaon Police Station, Kolhapur, for the offences punishable under Sections 302, 201, read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that one Mubarak lodged a report at the police station on 3.4.2017 alleging therein that his brother Yasin had left the house on the earlier day. He had not returned home.

They therefore made enquiries with relatives and friends and thereafter approached the police. On 3.4.2017, at about 8 a.m., one Sambhaji Bhosale called him up on his cellphone and informed him that a dead body was lying near Reliance Petrol Pump. Upon seeing the dead body, the complainant was sure that it was a case of homicidal death and hence lodged a report on the basis of which Crime No.87 of 2017 is registered against unknown persons.

3. In the course of investigation, it had transpired that the applicant with the aid and assistance of the co-accused, had caused homicidal death of Yasin. In the course of investigation, statement of one Sangeeta was recorded under section 164 of Cr.P.C. She has disclosed to the police that she was initially married to G. Magade. She is a mother of 18 year old son and a 16 year old daughter. She was acquainted with Daji who was resident of the same place. She was residing with Daji Bandgar as his wife. That Yasin Mirza used to visit their house and got acquainted with each other. One day, Yasin had enquired about the whereabouts of Daji. He had even attempted to inappropriately touch Sangeeta under the influence of alcohol. He had disclosed that he would not spare Daji at any cost. She has further stated that in absence of Daji, Yasin used to visit her

house quite often and make frail attempt to establish relations with her. That Daji was missing for more than 2 days. He had informed his wife that she can move about freely as Daji would not create any obstacles for her. She has further disclosed that Yasin was called on the pretext of treating him for alcohol and thereafter he was assaulted. She has specifically stated that the vehicle of the present applicant was used for commission of the said offence.

4. Upon perusal of the papers of investigation, it appears that the applicant was patrolling outside the court to find out the whereabouts of the complainant. They had hired the tempo of the present applicant who is also a driver. That they had conspired to eliminate Daji.

5. It is a case of circumstantial evidence. The learned APP submits that there are C.C.TV footages to indicate that at the relevant time, the applicant was near the scene of offence. The applicant vehemently submits that the said statements are falsified. That no specific overt act was attributed to the applicant and hence deserves to be enlarged on bail.

6. As against this, the learned APP has submitted that there is cogent and convincing material to implicate the accused persons. In the course of investigation in Crime No.87 of 2017, the applicant has produced

the car which was used at the time of commission of offence.

7. Taking into consideration all these facts, this Court is not inclined to grant bail. The application being sans merit, stands rejected.

8. However, it is made clear that the observations are restricted to an application under section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

(SMT. SADHANA S.JADHAV, J.)