

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

BAIL APPLICATION NO. 2364 OF 2017

Bhagwat Madhukar Patil.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Hrishikesh Mundargi, advocate for Applicant.

Mr. S.R. Agarkar, APP for State.

Mr. S.G. Sawant, H.C., L.C.B. Sangli.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 19, 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 8/9/2016 in Crime No. 406/2016 registered at Sangli Police Station for offence punishable under section 364, 302, 201, 120(b) read with section 34

of the Indian Penal Code and Section 3, 25, 27(1) of the Arms Act. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 8/9/2016, complainant Sachin Gavali who happens to be the brother of Milind Gavali lodged a report at the police station that on 4/9/2016 at about 7.30 p.m. Milind has left house for meeting his friends. Since he had not returned, missing complaint was filed. They had searched for him at various places. Subsequently they have suspected that Milind has been abducted by some unknown person over some money transaction. On the basis of the said report, Crime No. 186 of 2016 was registered for offence punishable under section 363 of the Indian Penal Code.

4 In the course of investigation, the applicant was arrested alongwith others. The applicant happens to be the original accused No. 3. The statement of the complainant was again recorded on 29/9/2016. It appears from the record that when the family

members and friends were searching for Milind, the applicant had neither enquired nor cooperated although he happens to be a good friend of Milind and hence, his involvement was suspected by the police and therefore, he was taken into custody.

5 It is the case of the prosecution that after arrest of the applicant, the Investigating Officer has recorded statement of one Bhimrao Mane who happens to be an officiating member of Sangli Zilla Parishad. He had disclosed to the police that on 6/9/2016 the applicant had been to meet him in an intoxicated state of mind and had disclosed to him that there was some money transaction between Rahul Bhosale and Milind. Rahul Bhosale had cooperated with Milind. However, Milind had cheated upon him. He also disclosed that due to this Rahul Bhosale, Sanjay Hosmane, Sidharth Chiparikar and himself had caused homicidal death of Milind. The witness had also disclosed that he had learnt that the friends had initially killed Milind and thereafter, set his body on fire. It is pertinent to note that the dead body of Milind has not been found. The accused had shown the place

where dead body was set on fire. Some pieces of bones were collected and sent for forensic examination and the report shows that no definite conclusion can be drawn. In any case, the said spot was shown on 20/9/2016. The statement of Bhimrao Mane was recorded under section 164 of the Code of Criminal Procedure, 1973 and he affirmed before the Magistrate that one person namely Baba Edke had shown him newspaper cutting in which it was reported that Bhagwat Patil was arrested for causing murder of Milind @ Minchya Gavali. Thereafter, a statement was recorded by a constable of crime branch. He has only affirmed that he is acquainted with the person known as Bhagwat Patil. He has not whispered about the disclosure statement or extra judicial confession made before him. Similarly statement of Vikas Lengare has also affirmed that on 4/9/2016 he had met present applicant. They had some casual chat. Thereafter, since it was a day of Ganesh Chaturthi, they had parted way. Again this is an extra judicial confession.

6 According to the learned Counsel for the applicant, this is a case of corpus delicti. The evidence is circumstantial in nature. The material collected in the course of investigation cannot be converted into substantive evidence at the time of trial and hence, accordingly to the learned Counsel, the applicant deserves to be enlarged on bail.

7 Taking into consideration the material collected in the course of investigation, prima facie it cannot be said that there is sufficient, cogent material, which can be converted into substantive evidence at the time of trial. The investigating agency is placing implicit reliance upon the extra judicial confession made to Bhimrao Mane and Vikas Lengre and the same is controverted by their statement under section 164 of the Code of Criminal Procedure, 1973. Hence the applicant deserves to be enlarged on bail. However, the co-accused shall not claim parity with the present applicant.

8 It is made clear that the above observations are restricted to the application under section 439 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration at the time of trial.

9 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant 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.
- (iii) The applicant shall not reside in Sangli till the framing of charge.
- (iv) The applicant shall not tamper with the evidence.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)