

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

BAIL APPLICATION NO. 2571 OF 2017

Nasim Mohammed Ansari.	... Applicant.
Versus	
The State of Maharashtra.	... Respondent.

Mr. Abhaykumar Apte, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 11, 2018**

P.C.:

1 Heard 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 25/6/2017 in Crime No. 541 of 2017 registered at Hadapsar Police Station. Investigation is completed and charge-sheet is filed.

3 It is the case of the prosecution that on 30/5/2017 one Harshal Javale lodged a report at the police station alleging that on 29/5/2017 he had been to hotel Vrundavan alongwith his friend for dinner. He had learnt that some quarrel is going on at Ramtekadi and therefore, he had been to the said place. He had not seen anybody there and therefore, he had returned home. It is also alleged that in the midnight at about 1.45 a.m. he had received a phone call from his friend namely, Sunny that his life is in danger. That he had called upon first informant near Hadapsar Canal, Pandhare Wadi. First informant had proceeded to the said spot. When he reached there, he saw that friends who accompanied Sunny were fleeing from the spot. He had also enquired with them. He had searched for his friend Sunny. He could not find him and therefore, he had to return home. In the morning at about 10 a.m. he was informed by his friend Sunil that Sunny was found in unconscious condition by the police. He has been taken to Sane Guruji Hospital. The first informant had reached the hospital where Sunny was declared dead. He had seen several injuries on the person of Sunny.

4 It is the case of the prosecution that in the course of investigation it was revealed that the present applicant had made an extra judicial confession before one Shahrukh Hussien Khan whose statement was recorded on 3/6/2017. he had disclosed that on 29/5/2017 his friend Nasim had called upon him and had informed him that after iftar party boys had been to hotel Vrindavan. It was disclosed that the present applicant had disclosed that he had stabbed Sunny and there is every possibility that he would lodge complaint and therefore, he was proceeding to Mumbai.

4 The papers of investigation would reveal that there are 3 eye witnesses to the incident who were in the company of the present applicant and the deceased. They have disclosed that on the relevant date i.e. in the intervening night between 29th and 30th May, 2017 they had consumed alcohol and thereafter, they had been for smoking pipe. At that time, there was a quarrel and in the said altercation, the applicant had stabbed deceased Sunny.

5 The certificate issued by Sane Guruji Arogya Kendra that the deceased had sustained two stab injuries. One was on the left side of the chest and the other one was on the scapular region medially to right midiovascular line. The post mortem notes would show that the said injuries were fatal. The deceased had also sustained certain abrasions.

6 The learned Counsel for the applicant vehemently submits that in fact, the first informant had seen the four person fleeing from the spot when he reached there and therefore, it cannot be said that the first informant is an eye witness. It is also submitted that the incident had occurred in a fit of rage and on the spur of the moment and the very fact that the deceased was lying unconscious condition at the relevant time, the applicant has no intention to cause his homicidal death of Sunny.

7 However, taking into consideration the fact that this is a case of direct evidence which is also corroborated by the extra judicial confession would be sufficient to deny bail to the present applicant. Hence, applicant does not deserve to be enlarged on bail.

8 However, it is made clear that the observations made hereinabove are prima facie and restricted to the application under section 439 of Code of Criminal Procedure, 1973. The trial Court shall not be influenced by the same at the time of trial.

9 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)