

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

BAIL APPLICATION NO. 2635 OF 2017

Kiran Jagannath Kiratkar Applicant
 Vs.
The State of Maharashtra Respondent

Mr. Rajiv Patil, Senir Counsel i/by Mr. Prashant Mohan Patil for the Applicant.

Mr. S.S. Pednekar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 26th June, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 30th August 2016 in Crime No.600 of 2016 registered at Nigdi police station, District Pune for the offences punishable under Sections 302, 120(B), 143, 147, 148, 149 read with 34 of Indian Penal Code, under Section

37(1) read with 135 of Bombay Police Act and 4(25), 3(25) of Arms Act. The investigation is completed and the charge-sheet is filed.

3 It is the case of the prosecution that on 30th August, 2016, Arati Krushnat Dange lodged a report at the police station alleging therein that on 29th August 2016, her husband Krushnat Dange had left the house on Aactiva motorcycle to meet his friends. That one of his friends namely Suraj had informed her that Krushnat Dange is lying in an injured condition near Nakshatra Society. She had verified the said information and had rushed to YCM Hospital, Pimpri, Pune, wherein she was informed that Krushnat Dange was declared dead on admission. She has further disclosed that on 5th May 2016, her husband Krushnat Dange had an altercation with Somnath Chavan, Mayur Salunke and the present applicant. That her husband was in custody for almost three months and was enlarged on bail, just one month prior to his demise. It was on the basis of this information, that the offence was registered against the present applicant.

4 It is pertinent to note that accused Somnath Chavan has been enlarged on bail by this Court (Coram : Revati Mohite Dere, J.) vide order dated 5th May 2017. It is observed that there are eye witnesses in the present case, however, none of the eye witnesses had named either Somnath Chavan or the present applicant. According to the learned APP, the criminal case is registered against Somnath Chavan. It is the matter of record that the present applicant is arrested on the basis of the disclosure statement of the co-accused. Learned APP submits that there is no recovery at the instance of the present applicant under Section 27 of the Indian Evidence Act. The statement of the co-accused, being inadmissible in evidence cannot be taken into consideration. The first informant had expressed a suspicion against the present applicant and Somnath Chavan, since they had a quarrel with her husband. It appears from the papers of investigation that the present applicant had no specific motive to eliminate Krushnat Dange and that there were quarrels with Somnath Chavan.

5 Learned Senior Counsel, Mr. Patil submits that this would be a case of no evidence, since only incriminating circumstance by the prosecution is the statement of the co-accused. It is submitted that even otherwise by virtue of doctrine of parity, the present applicant would be entitled to be enlarged on bail.

6 Taking into consideration the papers of investigation and the submissions advanced across the bar, this Court is of the opinion that the applicant herein deserves to be enlarged on bail.

7 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 in the course of hearing, discharge application or at the time of trial. Hence, the order :

O R D E R

- i) The application is allowed.
- ii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lac only) with one or more

solvent sureties in the like amount.

iii) The applicant shall attend the concerned police station on the first Monday of every month from 10.00 am to 1.00 pm. till conclusion of the trial.

iv) The applicant shall inform his latest place of residence and mobile number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned police station, in writing.

v) The applicant shall not enter the jurisdiction of Nigdi police station, except for the purpose of attending the police station.

vi) Upon being released, the applicant shall give an undertaking to the learned Sessions Judge, Pune, seized with Sessions Case No. 1117 of 2016 to the effect that he shall attend each and every dates at the time of trial.

vii) Upon failure to attend more than two consecutive dates, the prosecution would be at liberty to file an application under Section 439(2) of Cr.P.C.

(*Smt. Sadhana S. Jadhav, J*)