

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

BAIL APPLICATION NO.2857 OF 2017

Suvarna Bajrang Bharam Applicant
 Vs.
The State of Maharashtra Respondent

Mr. Aniket U. Nikam i/by Mr. Aashish Satpute for the Applicant.
Mrs. P.P. Shinde, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 6th February, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 17th June 2016 in Crime No.285 of 2016, registered at Warje-Malwadi Police Station, Pune. The investigation is completed and the charge-sheet is filed on 9th September 2016 against the applicant and others for the offences punishable under Sections 302, 341, 120(B) read with 34 Indian Penal Code, under Section 3(25) of Arms Act and under Section 37(1) read with 135 of Mumbai Police Act.

3 It is the case of the prosecution that on 11th June, 2016, Vilas Sitaram Bharam lodged a report at the police station alleging

therein that on 10th June, 2016, at about 11.30 pm., when his brother Bajrang Sitaram Bharam was returning home on his Scooty Pep, he was assaulted by some unknown persons for some unknown reason and has caused homicidal death of his brother Bajrang. On the basis of the report, Crime No. 285 of 2016 was registered.

4 In the course of the investigation, the investigating agency had learnt that the wife of the deceased was having illicit relations with the co-accused namely Aashish Nalawade. The investigation is shifted in the said direction. They had called the wife of the deceased to the police station. The relatives of the deceased more particularly the brother-in-law Babulal Laxman Mohol was present in the police station. In the presence of the witnesses, the applicant is alleged to have disclosed that she had developed illicit relations with Aashish. On one occasion, her husband had checked her cellphone and has seen the number of calls and messages exchanged between the present applicant and Aashish. He had assaulted her and had damaged the cellphone. The present applicant had further disclosed that she had then instigated Aashish and his friend to eliminate her husband. She had also given the time when they could carry out their action plan. She had disclosed that on the 10th day of each month, he visits Namrata Mitra Mandal at Karvenagar, Pune and while he returning home, he is carrying funds upto 1,00,000/- to 2,00,000/- with him. She had assured the co-

accused that she would give funds to them in the eventuality that her husband would be killed.

5 It is pertinent to note that the offence was registered on 11th June 2016 and the disclosure statement by the applicant was made on 20th June, 2016 i.e. after registration of the offence. It was a statement, which was made in the police station to the police and hence would be hit by Section 25 of the Indian Evidence Act. The said statement of the applicant cannot be converted into admissible substantive evidence at the time of trial. There is no other cogent material except the fact that the applicant had illicit relations with Aashish, who is the principal accused in the present case. In view of this, the applicant deserves to be enlarged on bail.

6 The observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

1 The application is allowed and disposed of.

2 The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.

(Smt. Sadhana S. Jadhav, J)