

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPTORY BAIL APPLICATION NO. 1303 OF 2019**

Babu Bhau Bhagat

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ashok P. Mundargi, Sr. Counsel I/b Mr. Raviraj R. Paramane for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 21st JUNE 2019

P.C.

1 Heard learned senior counsel for the applicant and the learned A.P.P

2 By this application, the applicant seeks pre-arrest bail in connection with C.R. No. I-34 of 2016 registered with the Kasara Police Station, Thane, for the alleged offence punishable under Sections 302, 201, 364, 120B r/w 34 of the Indian Penal Code ('IPC').

3 Learned senior counsel for the applicant submitted that on 26th August 2016, Bharat Dhapte (deceased) went missing, pursuant to which,

his wife-Hirabai lodged a missing complaint in the police station. He submitted that on 20th June 2018, a skeleton along with a motorbike was found in river Vaitarna, pursuant to which, investigation under Section 302 of the IPC, commenced. He submitted that there is no material to connect the applicant with the alleged offence.

4 Learned A.P.P opposed the application. He submitted that there are statements of witnesses, which point to the complicity of the applicant in the alleged crime and show that the applicant along with others, killed Bharat and thereafter dumped his body along with his motorcycle in the river.

5 Perused the papers. It is the prosecution case that on 23rd August 2016, at around 2:30 p.m, Bharat (deceased) left his house to meet Devram Nikhade, Santosh Nikhade, Babu Shaikh and Monika Pasare at Aman Hotel, Shirol. At about 7:45 p.m, Bharat spoke to his wife-Hirabai on the phone and informed her that some warrant was issued against both of them by a Court at Kasara and that he was going to Kasara Police Station. However, Bharat did not return home, pursuant to which, Bharat's

wife-Hirabai lodged a missing complaint with the Kasara Police Station on 26th August 2016. On 12th September 2016, Bharat's son Dinesh lodged an FIR with the Kasara Police Station, alleging offences punishable under Sections 365, 506 r/w 34 of the IPC as against Devram, Santosh, Babu and Monika. Pursuant to the said FIR, Devram and Santosh were arrested by the police and were released on regular bail, whereas, Babu and Monika were granted pre-arrest bail by the Sessions Court. On 20th June 2018, a skeleton of a male along with a motorcycle was found in river Vaitarna. The complainant (son of Bharat) and his mother (Hirabai) identified the motorbike as belonging to Bharat. Bharat was also identified on the basis of his shirt and shoes. Iron plates, grinding stone, plastic sacks filled with stones and nylon rope were found at the spot. The skeleton was sent for DNA profiling. Pursuant thereto, the police added Sections 302, 201 and 120B of the IPC to the aforesaid FIR. After Section 302 was added, the police arrested accused nos. 1 to 6. During the course of their interrogation, name of the applicant emerged as being an accused in the said crime. Sitabai, who allegedly gave *supari* to the applicant was also arrested in the course of investigation.

6 According to the prosecution, it transpired during investigation, that co-accused Sitabai felt that Bharat (deceased) had done black magic on her husband, as a result of which, her husband expired, pursuant to which, she gave *supari* to the applicant to kill Bharat. It is alleged that the applicant along with other co-accused caused the death of Bharat and dumped his body along with the motorcycle in river Vaitarna. In the course of investigation, statements were recorded, which *prima facie*, show the complicity of the applicant in the alleged offence. The statement of Kadam Malu Ughde (neighbour of Sitabai) shows that two years prior, he had seen the present applicant along with 4-5 others forcibly making Bharat sit in the car, after which, Bharat went missing. He has stated that out of fear, he did not disclose the same to any person. Similarly, the statement of Devram Shinde also shows that he had seen the applicant and 4-5 others along with deceased Bharat two years prior, at around 8:00 p.m. He has stated that he saw the applicant along with 4-5 others forcing Bharat to sit in the car, after which, Bharat went missing. He has stated that he did not disclose the incident to any person due to the fear of the applicant, who was a terror in the area. The statement of Smt. Shevanti Dhapte (sister-in-law of Sitabai), shows that in April 2016, co-accused Sitabai had asked her for money, as

she was in need of money. Shevanti has stated that she had given an amount of Rs. 2,00,000/- in 3 instalments i.e. Rs. 50,000/- prior to Bharat going missing and two instalments i.e. Rs. 1,00,000/- and Rs. 50,000/- after Bharat went missing. She has given her bank details, when the said amounts were withdrawn. She has stated that when she asked Sitabai why she wanted so much money, Sitabai disclosed to her, that she had given *supari* of Rs. 3,00,000/- to the applicant to kill Bharat. Sitabai also disclosed that Babu Dhapte (applicant) after killing Bharat, had thrown his body in the water. The said statement can be said to be an extra-judicial confession. The statement of Bhaskar Dhapte, throws light on the motive to kill Bharat i.e. Sitabai felt that Bharat had killed her husband by doing black magic.

7 Apart from the aforesaid, there is other material, in the form of articles found in the house search of the applicant i.e. weights similar to those which were found in the water bed. The applicant has an antecedent i.e. C.R. No. 267/2014 registered against him.

8 *Prima facie*, considering the material *qua* the applicant, this is

not a fit case to grant pre-arrest bail to the applicant. Application is accordingly rejected.

9 It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application. If an application for regular bail is filed, the learned Judge shall consider the same on its own merits, uninfluenced by the observations made in this order.

REVATI MOHITE DERE, J.