

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

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 17th OCTOBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on 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, 365, 120B, 506 r/w 34 of the Indian Penal Code ('IPC').

3 Learned counsel for the applicant seeks bail on the ground of parity. He submits that identically placed co-accused Mahesh Nimse and Sunil Gaikar have been enlarged on bail by this Court (Coram : Revati

Mohite Dere, J.) vide order dated 18th September 2019 passed in Criminal Bail Application No. 1781 of 2019.

4 Learned A.P.P does not dispute the aforesaid.

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 co-accused-Babu Bhagat emerged as being an accused in the said crime. Sitabai, who allegedly gave *supari* to the co-accused-Babu Bhagat 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 co-accused-Babu Bhagat to kill Bharat. A perusal of the statements of two witnesses i.e. Kadam Malu Ughade (Sitabai's neighbour) and the statement of Dundaram Soma Shinge show that they had seen co-accused-Babu Bhagat, along with 4-5 others, forcing the deceased-Bharat to sit in the car, after which, Bharat went missing. Admittedly, the applicant has not been named by the said two witnesses. Similarly, the statement of Jafar Shah, who allegedly heard the conspiracy, does not disclose the name of the applicant. No identification parade has

been held. The applicant is in custody since 14th August 2018. Investigation is complete and charge-sheet is filed.

7 Considering the aforesaid, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 15,000/-, with one or two sureties in the like amount;
- (ii) The applicant shall attend the concerned Police Station on the first Saturday of every month from 10:00 a.m. to 11:00 a.m. till the conclusion of the trial;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults either in attending the Police Station or in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.