

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

**CRIMINAL APPLICATION NO. 606 OF 2018
WITH
CRIMINAL APPLICATION NO. 607 OF 2018**

Harishchandra Baliram Mhatre ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

Mr. Satyaram R. Gaud for Applicant in both the Criminal Applications.
Mr. Niranjana Mundargi I/by Kuldeep Nikam for Respondent No.2 –
Complainant in both the Applications.
Ms. J. S. Lohokare, APP for Respondent No.1 – State.

**CORAM : NITIN W. SAMBRE, J.
DATE : MARCH 5, 2019.**

P.C. :

. In Crime No. 178 of 2018 alongwith present Respondent No.2 in both the Applications other three accused are impleaded. Against all the five accused persons, prosecution case is, the Complainant's daughter who died on 20th September 2018, was married to co-accused Atul. After the offence was registered, in postmortem, an ante-mortem injury on the head was noticed. As such, the offence punishable under section 302 of Indian

Penal Code came to be registered against all the family members of the co-accused Atul i.e. the husband of the deceased.

2. The Respondent No.2 in both the Applications were ordered to be released on pre-arrest bail by the Sessions Court, Alibaug on 17th October, 2018, of which cancellation is sought before this Court.

3. The submissions of the Complainant while seeking cancellation are, from the investigation it could be inferred that the Respondent No.2 in both the Applications were present at the time when the incident took place. The deceased died of an ante-mortem injury i.e. an injury which is noticed on the head. According to the Complainant, even if out of the five accused, two accused are subjected to custodial interrogation, the weapon used in the commission of crime is not recovered. That being so, the custodial interrogation is warranted.

4. The learned Counsel would invite attention of this Court to the very object of Section 438 of the Code of Criminal Procedure and submits that while working out equities the Court has lost sight of the fact

that the victim – a woman was blessed with a child of two years. As such, cancellation is sought.

5. The learned Counsel for Respondent No.2 in both the Applications supported the order of granting pre-arrest bail based on the contents of the FIR and the other material available on record.

6. The learned APP assisted with this Court in the matter in appreciating the material which is placed on record.

7. Having appreciated the submissions, what is noticed is, in the FIR there is a reference to the Respondents herein of their personal presence and some earlier stale instances which are trifling in nature. The fact remains that all the family members of the Respondents are impleaded as accused.

8. The investigation in the matter is completed to the extent of custodial interrogation of Accused Atul i.e. the husband of the deceased and his younger brother who happened to be the husband of one of the Respondents.

9. In the aforesaid background and having regard to the reasons furnished by the Sessions Court while granting pre-arrest bail in favour of Respondents, I hardly noticed that the view expressed by the Sessions Judge is not a possible view or is shockingly non-appealing.

10. That being so, in my opinion, no case for cancellation of bail is made out. Hence, both the Criminal Applications stand rejected.

(NITIN W. SAMBRE, J.)