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

BAIL APPLICATION NO.875 OF 2023

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Dattatray Alias Dattu Vishwanath Ubale ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Aniket Vagal with Mr. Kunal Pednekar and Mr. Divesh Mehani for the applicant.

Ms. Rutuja Ambekar, APP for the respondent/State.

Mr. K.K. Jadhav, Police Constable, Chandwad Police Station, Nashik Rural, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 24, 2023

P.C.:

1. This is an application under Section 439 of the Criminal Procedure Code, 1973 seeking bail in connection with C.R. No.47 of 2022 registered with Chandwad Police Station for offences punishable under Section 302 of the Indian Penal Code, 1860.

2. According to prosecution, on 6 February 2022 around 4.00 p.m. informant's brother left home with applicant on Hero Honda motorcycle but he did not return till late night. On the next day, i.e., on 7 February 2022 informant got knowledge of death of his brother. His body was found near Waghdardi Dam. The informant went to Sub-District Hospital to see the body. He noticed several

injuries on his head, neck, face chest and thigh caused by sharp edged weapon. He found palm was missing. He, therefore, lodged report against unknown persons.

3. On the next day, supplementary statement of the informant was recorded where he named the applicant, motive for commission of offence, i.e. illicit relationship with the deceased's wife.

4. The applicant was arrested on 9 February 2022. During investigation, blood stain clothes and blood stained sickle was recovered as per Section 27 of the Criminal Procedure Code, 1973. After completion of investigation, prosecution filed charge-sheet.

5. The learned Additional Sessions Judge-1, Nipad rejected the application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973 by order dated 31 March 2022.

6. On perusal of the material on record, it appears that the prosecution's case is based on circumstantial evidence. Following are the circumstances in support of the prosecution's case: (i) last seen; (ii) motive and (iii) recovery of blood stained clothes and weapon.

7. Prima facie, four witnesses have stated that they had seen the applicant along with deceased at around 5.30 p.m. on 6 February 2022. The CCTV footage prima facie supports the case of the prosecution to the extent of applicant accompanying the deceased. The SMS on record which is electronic evidence indicates conversation between the applicant and deceased which shows that on 6 February 2022 the applicant had called deceased

to meet him. Though the recovery is from open space, at this stage, it cannot be excluded from consideration as the clothes and sickle recovered had blood stains. The motive alleged is illicit relationship between the applicant and deceased's wife. It is stated in the supplementary statement that a police complaint was earlier filed against the applicant by the wife of the deceased.

8. On overall consideration of the circumstances referred above, complicity of the applicant prima facie appears. Ultimately, the circumstances need to be proved during trial by the prosecution to complete the chain of circumstances. However, at this stage the prosecution has made out a prima facie case.

9. The bail application cannot be entertained. The bail application, therefore, stands rejected. No costs.

10. It is made clear that the observations made in the present order prima facie in nature made for the purposes of adjudication of bail application and shall not influence the Trial Court while deciding the trial.

(AMIT BORKAR, J.)