

ORDER BELOW EXH. 3
IN SESSION CASE NO. 19 OF 2018

State of Maharashtra	Prosecution
Versus	
Ramesh Dhondu Zhore etc. 4	Accused

1. This application is filed under section 439 of the Code of Criminal Procedure. Brief facts of the case may be stated as follows.
2. Prosecution case in short is that on 26.05.2018 all the accused in furtherance of their common intention have kidnapped the minor son of the first informant Babu Pandurang Zhore, resident of Khavti, Dhangarwadi, Taluka Khed, District Ratnagiri and they have committed his murder.
3. Advocate for the accused No.1 and 4 argued that initially the complaint was lodged under section 363 against unknown person. Then after the crime was registered for the offence punishable under section 302 and 363 of the Indian Penal Code. Defence advocate further argued that no any incriminating article was seized from the accused No. 1 and 4. Blood was not found on the cloths of the accused No. 1 and 4. The case is based on circumstantial evidence. No one has seen the deceased with the accused lastly. So, last seen theory is not applicable to this case. The accused are not habitual offenders. So, application may be allowed.
4. Defence advocate placed reliance upon a judgment of the Hon'ble Bombay High Court in Criminal Application No. 4431 of 2017 decided on 15.09.2017. In this case the accused was prosecuted for an offence punishable under section 302, 201, 363, 364, 120B and 34 of the Indian Penal Code. The bail was granted mainly on the ground that co-accused was released on bail. That means on the ground of parity the bail application was granted.
5. On the other hand, APP Smt. M. S. Nalawade argued that there was a dispute between the first informant and accused No.1.

The motive of the crime is this dispute between the first informant and accused No.1. The accused No. 2 to 4 have committed crime on the say of the accused No.1. One of the accused has made a memorandum under section 27 of the Evidence Act. This leads to the discovery of cloths and bones of the deceased. Prima-facie case is made out by the prosecution side. The offence is serious. The charge-sheet is filed. The prosecution is ready to conduct the trial earlier. So, application may be rejected.

6. Admittedly, the charge-sheet is filed against all the accused persons. I have perused the charge-sheet. On perusal of the charge-sheet it appears that prosecution has made out a prima-facie case against all the accused that they have committed murder of the minor son of the first informant.

7. The offence punishable under section 302 of the Indian Penal Code is very serious. It is punishable with death.

8. The charge-sheet shows that after the offence the accused have tried to destroy the evidence. So, if the present application is allowed they again try to disappear the evidence. They are likely to pressurize the prosecution witnesses. The facts of the case law cited by defence advocate and facts of the present case are not similar. So, with respect I submit that this case law no where assist the defence advocate to allow this application.

9. For these reasons I have come to the conclusion that accused have failed to made out the case to release them on bail under section 439 of the Code of Criminal procedure. With this view of the matter I proceed to pass following order.

ORDER

Application Exh. 3 is rejected with costs.

Place - Khed.

(A.S.Avate)

Date :- 28/ 02 / 2019.

Additional Sessions Judge, Khed.

Case No. Special Case No. 19/2018 (O. Exh. 3)

I affirm that the contents of this pdf file order are same word as per original order.

Name of Stenographer : P. S. Lad

Court Name : Additional Sessions Court, Khed. (A.S.Avate)

Date of Decision : 28-02-2019.

Order Signed by P.O. on : 01-03-2019.

Order uploaded on : 01-03-2019.