

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.287 of 2015

Shaikh Sajed S/o. Khaled Shaikh
And Another.

.. Applicants.

Versus

The State of Maharashtra.

.. Respondent.

Shri. S.G. Ladda, Advocate, for applicants.

Smt. M.A. Deshpande, Additional Public Prosecutor, for
respondent.

Shri. R.P. Mote, Advocate, for complainant.

CORAM: T.V. NALAWADE, J.

DATE : 12th FEBRUARY 2015

ORDER:

1) The application is filed for bail. Both the sides are heard. This Court has perused papers of investigation.

2) Criminal Application No.4370/2014 was filed by the present applicants in this Court. Learned counsel for the present applicants had advanced arguments exhaustively. When this Court expressed that this Court

was not inclined to grant relief, the application was withdrawn. As per the practice prevailing at this station to avoid observations of this Court regarding merits of the case and the marshaling of material collected by the police, counsels withdraw applications though it is not specifically mentioned in the orders that applications were disposed of after advancing argument. In spite of this circumstance, learned counsel for the applicants submitted that previous application was not disposed of on merits. It needs to be observed here that previous application needs to be treated as disposed of, rejected on merits in view of the practice prevailing at this station. In view of this circumstance learned counsel for the applicants was expected to argue on change in circumstances. Learned counsel for the applicants has produced copy of order made by other Hon'ble Judge of this Court in Criminal Application No.6028/2014 on 2-12-2014. This application was filed by one Syed Sadiq s/o Syed Aref. The same learned counsel represented Sadiq. On merit the Hon'ble Judge has granted bail to this applicant. The submission was made by the learned counsel for the applicants that the order made by this

Court in respect of present applicants dated 4-9-2014 was shown to the Hon'ble Judge and after that the order dated 2-12-2014 was made. It can be said that the Hon'ble Judge has mentioned the order and passing reference is made by mentioning that direction was given to the trial Court by this Court to expedite the matter, within six months from the date of order i.e. 4-9-2014.

3) Learned counsel for the applicants submitted that on the ground of parity present applicants are now entitled to get bail. This Court has no hesitation to hold that when this Court had rejected the application of the present applicants and the other Court granted bail to other accused subsequent to the order made by this Court, the ground of parity will not be available to the present applicants. Though the previous application was virtually rejected on merits, learned counsel for the applicants insisted that the material needs to be discussed in the present matter. He submitted that in the case reported as **(2011) 1 SCC 694 (Siddharam Satlingappa Mhetre v. State of Maharashtra)** the Apex Court has laid down that material needs to be discussed. There is also a

case of Apex Court reported as **(2008) 16 SCC 753 (Lokesh Singh v. State of U.P.)** in which the Apex Court has made it clear that the Court considering bail application is not expected to say that particular material is not reliable or not true.

4) The deceased Mudassir was brother of complainant Shaikh Nashir. The incident took place on the night between 12-3-2014 and 14-3-2014. The State wants to prove that present applicants namely Shaikh Sajed and Syd Akabar and also the other accused namely Syed Sadiq were working with the deceased Mudassir. The deceased was doing business of refilling of gas cylinder which was illegal business. From the material collected by police during investigation the State wants to prove that there was motive for the crime as Shaikh Sajed had dispute with the deceased over this business and quarrels had taken place between them in the past.

5) There is statement of Mohd. Ashfaq, nephew of the deceased, to the effect that on 13-3-2014 at 6.00 to 6.30 p.m. when he was present with car of the deceased

bearing No.MH20-BY-4454 near Milk Dairy, Roshan Gate accused Sajed came there on motor cycle of the deceased. According to him, accused Sajed said that Mudassir had asked him to bring the car. In view of this message Mohd. Ashfaq took over the motor cycle from Sajed and handed over the car (red in colour) to Sajed.

6) One Jafarkhan Subhankhan, rickshaw driver, knew the deceased, present applicants and also other accused Sadiq. On 13-3-2014 at 7.00 to 7.15 p.m. he was present near Star Hotel situated near MGM Hospital Aurangabad. He noticed that in the Star Hotel deceased Mudassir, present applicants and other accused, Sadiq were present and they were having tea. This witness called Mudassir and paid respect to him. In his presence Mudassir and these three accused persons left in the red colour car of the deceased and went towards seven-hills side of Aurangabad. Thus at 6.30 p.m. this car was collected by Sadiq and in the same car present applicants and Sadiq and the deceased left together after 7.30 p.m. In addition to the statement of this witness, rickshaw driver, Jafarkhan, there is statement of Mohd Issaq, a

businessman. The deceased used to make purchase of clothes from him and so he knew the deceased. He knew present applicants and the remaining accused Sadiq also as they were introduced to him by the deceased himself. On 13-3-2014 at 7.00 to 7.30 p.m. he was present in the aforesaid Star Hotel and he had seen the deceased in the company of the present applicants and other accused Sadiq. He said hallow to the deceased and he had seen that the deceased had left with the present applicants and other accused Sadiq in the aforesaid red colour car and they had gone towards seven-hills side.

7) There is statement of Bapu Naik who was working as Manager in Hotel Trishul situated at Maliwada on Nashik highway. According to him, on 13-3-2014 at about 9.30 pm. one red colour car had come to his hotel and one man from the car had purchased two bottles of beer from him. The said man was in hurry and the car had gone towards Kasabkheda Phata. During test identification parade this man has identified accused Sadiq as the said person. At 9.30 p.m. Sadiq and others had gone towards Kasabkheda side.

8) Bhaginath Gaike is working as labour with Forest Department of Gautala reserved forest. He was working at Hiwarkheda check post on the night between 13th and 14th March 2014. One Gulabsingh was in his company. As per the procedure when any vehicle passes by that road they are expected to make entry of the vehicle / car number in the record, register. According to him, on that night at about 23.40 hours he had noted that one red colour car No.MH-20-BY-4454 had come towards check post and he had seen three persons in the car. One of them alighted from the car and he made inquiry about the road taking to Sillod. He had guided the said person. He told to Gulabsingh the number of the car, time, etc. and passengers and there is statement of Gulabsingh recorded accordingly. This man has identified Sadiq in the test identification parade. Thus at 23.40 hours i.e. at about 11.40 p.m. he had seen three persons in the red colour car. Here only it needs to be noted that the dead body of the deceased was recovered from underneath of a bridge constructed on a brook. This point is situated before this check post on the same road. This circumstance is very strong circumstance against all the

three accused.

9) The material collected shows that articles like rope used for strangulation purpose were recovered at the instance of the accused Sadiq on the basis of statement given under section 27 of the Evidence Act. Wallet of the deceased was also recovered at the instance of Sadiq. Though in strict sense recovery evidence cannot be used against other accused when case rests of circumstantial evidence there are aforesaid circumstances.

10) Learned counsel for the applicants submitted that there is statement of Shaikh Nashir, the complainant, that the car belongs to him and the deceased used to take away his car and on that day behind his back the car was taken away by the deceased. He submitted that the statement of Nashir is not consistent with the statement of Shaikh Ashfaq and also missing report given by Shaikh Nashir.

11) It needs to be observed that this Court is not expected to make appreciation of the material but the

learned counsel on the basis of some observations made in the case of Mhetre (cited supra) submits that at least some appreciation needs to be done. It can be said that, the material which will be coming from Shaikh Ashfaq will be on the basis of his personal knowledge and the material which will be coming from complainant will not be on the basis of his personal knowledge.

12) The aforesaid discussion shows that there will be material on motive and there will be evidence on the aforesaid circumstances against the present applicants. This Court has no hesitation to hold that these circumstances are sufficient to form a chain to bring home the guilt against the accused and the available material is sufficient to make out a strong prima facie case for offence of murder against the present applicants.

13) The learned counsel for the applicants further submits the statements were recorded belatedly and the police statements were recorded 15 days late and the statements under sections 164 of the Code were recorded after one and half months. It needs to be kept in mind that persons concerned can realise the meaning and

importance of such circumstances only when they get clue about the evidence. So when the case rests on circumstantial evidence, the statements are many times belated.

14) The submission made by the learned counsel for the applicants that bail granted to Sadiq is a circumstance due to which the applicants are entitled to bail is not at all acceptable in view of the aforesaid discussion. When this Court had refused bail on merits to the present applicants, if subsequently the other Hon'ble Judge granted bail to one accused, the parity principle cannot apply. This Court had given direction to expedite the matter and that period is not yet over. The aforesaid circumstances show that there is apprehension of tampering with the prosecution witnesses. Even when the deceased was the employer and he was involved in some illegal activities, he had money power, the accused had shown courage to finish him. This Court holds that this is not a fit case to grant the relief of bail. The application is rejected.

Sd/-
(T.V. NALAWADE, J.)

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