

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 492 OF 2015

Mr. Mohammed Mokim Idris Shaikh. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Muni Ahmed Kadir Chicktay, advocate for Applicant.

Ms. A.T. Jhaveri, APP for State.

Mr. S.K. Nayar, ASI, Mumbra Police Station, Thane.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 17, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicant herein is arrested on 12/7/2013 in
Crime No. 523/2013 registered at Mumbra Police Station for offence

punishable under Section 302 of the Indian Penal Code. The investigation is completed and charge-sheet is filed.

3 This is a successive bail application. On 6th August, 2014 when the Court was not inclined to grant bail, the application was withdrawn. It is submitted by the learned Counsel for the applicant that at that time, all issues were not raised before the Court and therefore, this is a successive bail application. There is change in the advocate as well as change in the APP. It cannot be said simpliciter that the matter was not satisfactorily argued on merits.

4 Be that as it may, it is the case of the prosecution that on 10th July, 2013 one Abdul Momin Khan lodged a report at the police station informing therein that he resides in room No. 80, Shravan Chawl, Adiwasi Pada at Mumbra. On 10.7.2013 at about 10.30 a.m. his neighbour namely Laila Shaikh rushed to his house and informed that she had been to the house of Gulnaz to wake up her for filling water. However, she found that she had died and was lying in the

house. She had suspected that her husband had caused her homicidal death. The complainant rushed to the house of Gulnaz and saw that she was lying dead. One door neighbour of Gulnaz Mukim Shaikh informed all the neighbours present on the spot that in the intervening night of 9/7/2013 and 10/7/2013, more particularly at about 2 a.m. she had heard deceased Gulnaz quarelling with her husband i.e. the present applicant. The neighbours had intervened. They had attempted to pacify the quarrel and then left for their respective homes. The complainant had observed that there were ligature marks on the neck of the deceased which according to him indicated that she had been strangulated as he had seen finger mark on the neck of the deceased. They tried to search for her husband i.e. the applicant. He was not found in close proximity and thereafter, the police was informed. On the basis of the said information, Crime No. 523 of 2013. was registered.

5 The learned Counsel for the applicant has drawn attention of this Court to the post mortem notes. According to the Counsel, cause

of death as asphyxia due to hanging. It is further submitted that it is a suicidal death. That there is no evidence of fracture on high bone or thyroid cartilage. It is submitted that it only on the basis of surmises and presumption that the applicant is being prosecuted for offence punishable under Section 302 of the Indian Penal Code.

6 The investigating Officer has recorded the statement of the one door neighbour of the deceased, which would clearly show that in the intervening night, there was quarrel between the couple. At the time when the neighbours went to the house in the morning, they have seen that the daughter of the deceased was sleeping on the cot whereas Gulnaz was lying dead. Her husband was not found. This is sufficient evidence to indicate that this is a case of custodial death. And that the deceased had died a homicidal death at the hands of the present applicant.

7 The learned Counsel for the applicant has drawn attention of this Court to the scene of offence panchanama and has submitted

that the said spot was shown by the accused and at that time, the applicant had given a plausible explanation to substantiate that Gulnaz had committed suicide. According to the learned Counsel, the applicant had disclosed to the police that his wife had hanged herself to the rafter in the house with odhani. At that time, he was sleeping. That he resided her to ground and had cut the odhani, which was seized in the spot panchanama. It is true that it is a case of circumstantial evidence. However, a false explanation would provide the missing link. Inference can be safely drawn that the applicant has committed the said act for the simple reason that after the incident whereabouts of the applicant were not known for 6 days.

8 The learned Counsel submits that there is no evidence to show that the deceased was ill-treated or harassed at the hands of the applicant. There is no motive. That only because a quarrel has taken place, she had committed suicide, which is being passed off as homicidal death. All these issues can be raised at the time of trial when the substantive evidence is being recorded. However, as on

today conduct of the accused can be appreciated under Section 8 of the Indian Evidence Act and therefore, the applicant does not deserves grant of bail.

9 However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 of the Code of Criminal Procedure, 1973 and shall not be considered while deciding the application for discharge or quashing of FIR or at the time of trial. The same be decided on its own merits in accordance with law.

10 The application being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)