

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 622 OF 2015

Salman Mohammed Ayub Shaikh. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. K.M. Tripathy, advocate for Applicant.

Mrs. A.A. Mane, APP for State.

Mr. S.M. Kole, P.S.I., Bangur Nagar Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 23, 2015

P.C.:

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

2 This is the subsequent application under section 439 of the Code of Criminal Procedure, 1973. The applicant herein is charge-sheeted in Crime No. 61 of 2013 registered at Bandra Police Station for offence punishable under Section 302, 120B read with Section 34 of the Indian Penal Code.

3 The applicant herein had filed Criminal Application No. 1302 of 2014. This Court after hearing the Counsel at length had expressed the opinion that the application would be rejected and thereafter, the learned Counsel for the applicant sought liberty to withdraw the application. The application was allowed to be withdrawn. This Court had requested the Sessions Judge seized with the Sessions Case No. 449 of 2013 to make an endeavour to conclude the recording of the evidence within one year from the date of framing of charge. The Learned Counsel for the applicant submits that the charge is not framed.

4 The co-accused Jasmin who happens to be the second wife of the present applicant had filed an application seeking discharge. The said application was rejected and thereafter, she has filed a revision application No. 220 of 2015 in this Court. This Court (Coram : M.L. Tahaliyani, J) by an order dated 23/6/2015 has directed the Trial Judge not to frame charges till 30/6/2015. Thereafter the matter was adjourned from time to time. However, the interim relief was

continued and therefore, the charge could not be framed. It is in this circumstance that the applicant is praying for enlargement on bail.

5 It is the case of the prosecution that on 4/2/2013 Abdul Razak Abdul Sattar Kandgaonkar lodged a report at Bandra Police Station alleging therein that his daughter Ayesha was married to the present applicant in the year 2009. The couple is blessed with two sons. That Ayesha was ill-treated in her matrimonial house. She was not allowed to have any conversation with the members of her matrimonial family.

6 The complainant had learnt that the present applicant has got married to Jasmin. He had made an attempt to verify the same from the applicant. The applicant is alleged to have sworn of his children and informed the complainant that he has not married to any one. That he is only flirting with another girl. After about 10 days, the complainant had received a phone call from unknown person who had informed the complainant that Ayesha may be subjected to black magic and then eliminated. The complainant was receiving unknown

calls and was being warned that he should take care of his daughter. The caller has not given his identity. The complainant had tried to verify this aspect from the applicant. He had noticed that the applicant was scared and insisted upon knowing the identity of the person who had called the complainant. On or about 1st February, 2013, the complainant had received phone call from an unknown person who had solicited the cell phone number of the present applicant. The caller had told the complainant that he will make the next call only after some incident would take place. The complainant at that time had learnt from reliable sources that the applicant was married to Jasmin. The complainant had expressed his suspicion that the phone calls were being made at the behest of the present applicant.

7 On 3/2/2013 at about 10 p.m. the complainant had received a message that some untoward incident has happened with Ayesha and her husband and therefore, they rushed to the house of Ayesha. The co-sister of Ayesha had informed the complainant that the couple has gone outdoor. The complainant had searched for them. The

complainant had informed Naushad Qureshi about the phone calls which he had received. The complainant had accompanied the Naushad Qureshi to sea-link, where they saw the younger brother of the applicant Samran and his friend Irfan were standing with Indigo car. The complainant had noticed that Ayesha was sitting on the seat next to the driver seat in the car. She did not wake up. He then attempted to wake up the present applicant who appeared to be unconscious. The complainant soon realised that he was only pretending to be unconscious. They were taken to the hospital. The complainant had noticed that the hands of Ayesha were tied behind. On the admission in the hospital, she was declared dead. Post mortem findings would reveal that Ayesha had died a homicidal death as the cause of death is asphyxia due to throttling.

8 According to the learned Counsel for the applicant, the applicant had divorced Jasmin in January, 2013 and she was demanding Rs. One Lakh from him. She had also threatened him that he would be implicated in some case. According to him, the applicant has been falsely implicated in the present case.

9 Perused the papers of investigation. Soon after the incident had come to light, the investigating officer had recorded the statement of the present applicant. He had admitted before the police that he has got married to Jasmin. He had got married to her on 20/9/2012. He was not able to talk with Jasmin since his first marriage was in subsistence. On 2/2/2013 he had taken deceased Ayesha for ride in his car. However that day he could not gather courage to eliminate her. Therefore, on 3/2/2013 again he had taken the car of his brother and taken his wife and children for a ride. He had planned to eliminate her. That he had taken the help of Sadik. That Sadik had tied bed-sheet around her neck. The applicant had taken custody of the children. By then, Sakir had also reached the spot. He has also helped Sadik. Thereafter, Sadik was the one who had called the complainant. On the basis of the disclosure statement of the present applicant, Sadik was arrested.

10 The learned APP upon instructions submits that Sadik is still in the custody. It appears from the record that the statement of the

applicant is not annexed to the charge-sheet for the reasons best known to the prosecution. The learned APP submits that since it is a statement before the police, it cannot be relied upon as a confessional statement and therefore, it was not annexed. The statement of the applicant was recorded soon after the incident. The admissibility of the statement can be considered at the time of trial. As on today, it can be considered as an explanation under Section 106 of the Indian Evidence Act, as the wife had died while in custody of the applicant. It is a case of custodial death and the circumstances in which the wife of the applicant has died is within the special and exclusive knowledge of the accused/applicant.

11 It is apparent on the face of the record that the applicant had conspired to eliminate his wife Ayesha since he wanted to reunite with Jasmin. The papers of investigation show that the investigating agency had recorded statement of one Shaikh Mohammed Shaikh Shakur. He has disclosed that he is well acquainted with the brother of the applicant. He had seen that the applicant had called upon his brother and thereafter, his brother had given him keys of Indigo car.

That the original accused No. 2 to 4 were also present. The call detail records would reveal that the applicant was continuously in touch with the accused No. 2 Mohd. Sadik. That the location was known to Mohd. Sadik who had called upon the complainant. All these aspect would clearly show that it is only a frail defence of the applicant that some unknown persons had attacked the car, tied up their hands and legs and thereafter, Ayesha was killed. It is pertinent to note that the applicant had not sustained any injuries. It is not the case of the applicant that unknown persons had attempted to extort from the applicant, commit theft or had any other ulterior motive to eliminate the wife of the applicant.

12 In the circumstances, upon going through the facts of the case, perusal of the papers of investigation, hearing of submissions advanced across the bar and the observations made hereinabove, the applicant does not deserve to be enlarged on bail. The application seeking bail being sans merit stands rejected. The application stands disposed of accordingly.

13 The learned Sessions Court shall not be influenced by the observations made hereinabove as they are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973.

(SMT. SADHANA S. JADHAV,J)