

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1170 OF 2015

Dastagir Nazir Shaikh. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Mangesh Patel i/b. Mr. Vinod Gupta, advocate for Applicant.

Mr. S.H. Yadav, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 22, 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 1/10/2013 in
Crime No. 313 of 2013 registered at Vashi Police Sttion for offence
punishable under Section 363, 364, 302, 201, 120(B)(1), 115 read
with Section 34 of the Indian Penal Code. The investigation is
completed and charge-sheet is filed on 27/12/2013.

3 It is the case of the prosecution that on 27.8.2013, Ansarul Anwarul Haq approached the Vashi Police Station and filed a missing report in respect of his brother Mahibul Haq @ Badal aged about 25 years. At the time of lodging the missing report, he had informed the police that on 26.8.2013 at about 5.30 p.m., his brother had gone to Vashi Railway Station, Sector No.30A and was waiting near Samsung Gallery to meet a friend and hand over some articles. He had not returned home and therefore, the brother was constrained to lodge the report. He had specifically stated in the missing report that they had some dispute with Akbar Altaf and Sabir Hasan, who are residing at Ashraf Saudagar Merchant Home, Linking Road, Bandra, Mumbai. They had threatened Mahibul 20 days prior to the incident that he would be eliminated. Similarly, 3 days prior to 26.8.2013 also Mahibul was threatened by the same persons.

4 The first informant has further stated Abu Torab who happens to hail from their native village had come for sight-seeing to Bombay and was residing with the first informant at the relevant time.

5 It is specifically reported that on 24.8.2013, when the first informant and his brother were at Bandra, they had met an unknown woman who had placed an order for certain cosmetics. As per the said order, on 26.8.2013, Abu Torab and Mahibul had left the house at about 12 noon. At about 8.45 p.m. Abu Torab had informed the first informant that the said lady had called Mahibul at Vashi Railway Station. Mahibul had left with an unknown person and had gone to meet the unidentified lady. At that stage, i.e. while lodging the missing complaint, the first informant had not suspected any foul play by anybody.

6 On 8.9.2013, Ansarul Anwarul Haq lodged a report at the police station that there was a dispute regarding the land at Uttar Pradesh with Akbar Altaf and Shagir Khan. The dispute was between his

brother Mahibul Haq and the said persons. He had given the address of the said three persons and had again reiterated that the said three persons had threatened him and his brother. He had also given the cellphone number of the unknown lady. His brother was having the said number. He has lodged the FIR on the basis of the information given to him by Abdul Torab. He has specifically stated the description of the said three persons and their wearing apparel. It is alleged that Mahibul was taken as a pillion rider on the motorcycle. However, the registration number of the motorcycle has not been mentioned. It appears that basically, suspicion was against the unknown lady. It was stated in the FIR that one unknown person who was wearing helmet had approached his brother in front of Samsung Gallery and had taken his brother along with him. On 9.9.2013, the investigating agency had recorded the statement of Mohammed Abu Torab. He has stated that he had accompanied Mahibul Haq. One person had come on a motorcycle. The said person was wearing the helmet. It is stated that other two persons had accompanied the

motor-cyclist. It is specifically alleged that Mahibul had left along with three persons who had come to receive them.

7 In the meanwhile , i.e. on 28.9.2013, an unidentified dead body was found at Sanpada. Chandrashekhar Mahadev Bhosale had given the report to the police station about the unidentified dead body. He had specifically stated that it was the skeleton remains of a human being. He was wearing a black coloured Jeans pant and a soiled white T-shirt. According to Chandrashekhar Bhosale, the body was removed from the spot and was taken to the Municipal Corporation Hospital at Vashi Navi Mumbai for post-mortem. He had suspected that the said person must have gone into the bushes for answering nature's call and he must have fallen there.

8 The post-mortem was conducted on the said dead body. The post-mortem notes reveal that on 29.9.2013, an unknown skeletonised human remains were found within the jurisdiction of Turbhe Police Station, Navi Mumbai. The unknown skeletonised body

was brought for post-mortem and has been sent to J.J. Hospital and FMT Department, Mumbai. The body was sent for anatomical examination to ascertain the age, sex, bony injuries and after anatomical examination, it would be further sent for superimposition to appropriate authority.

9 Today the Court has perused the DNA report as well as FMT report. FMT report only shows the remains are probably of a male person aged about 25 years.

10 This Court has also perused the report of the Test Identification parade. There is nothing to indicate that the applicant was identified. The compilation of the charge-sheet also does not include any call details record to substantiate that the deceased was in touch with the present applicant at any point of time.

11 The learned APP has drawn the attention of this Court to the statement of Amina Dastagir Shaikh i.e. the wife of the applicant

recorded under Section 161 of the Code of Criminal Procedure, 1973 on 12/10/2013. The said statement is signed by Amina. She has disclosed that other co-accused who have been enlarged on bail had assembled in her house on 24/8/2013. On 25/8/2013 she had been to Darga at Ray Road alongwith her husband. On 26/8/2013 she had made a phone call to Mahibul and enquired as to when he would come and he had responded by saying that he would come at 5 p.m. She called up Mahibul for about 4 to 5 times on that day. However, it is a statement of co-accused.

12 It is pertinent to note that the first informant had demonstrated suspicion against three persons while lodging the FIR. However, there is no investigation in that respect. It is true that the accused cannot claim benefit of the lapses in the investigation. However, the present case rests upon circumstantial evidence and prima facie after filing of the charge-sheet, there is no material on record to substantiate that the present applicant was in contact with the missing person. This Court (Coram : Smt. Sadhana S. Jadhav, J) had

enlarged co-accused Abdul Guddubadshah Shaikh and Imtiyaz Riyaz Mohammed Shaikh on bail by allowing Cr. BA 1691/14 and Cr.BA 1777/14. At that juncture also, this Court had observed that co-accused Amina Dastagir Shaikh i.e. the wife of the present applicant and Shafiqul Hasan Khan have been enlarged on bail by the Coordinate Bench (Coram : A.M. Thipsay, J).

13 Taking into consideration the evidence collected by the prosecution, the submissions advanced across the bar and the fact that four accused are enlarged on bail and the said orders are not challenged by the State and have attained finality, by virtue of doctrine of parity, the applicant herein also deserve grant of bail.

14 It is made clear that the observations made hereinabove are restricted to an application under Section 439 of the Code of Criminal Procedure, 1973. The same shall not be considered while deciding the application for discharge or for quashing of FIR or at the time trial. The learned Trial Court shall decide the matter uninfluenced by

the above said observations and arrive at a conclusion only on the basis of the substantive evidence adduced by the prosecution at the time of trial.

15 Hence, following order is passed:

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more solvent sureties in the like amount.
- (iii) The applicant shall furnish his residential address where he is going to reside during the pendency of the trial, cell number, landline number and all other details, as required by the investigating agency and also inform the change, if any, to them.
- (iv) After release on bail, the applicant shall report to the concerned police station for 3 months on every alternative Sunday between 10 a.m. to 12 noon.

(v) The applicant shall attend each and every date in the Sessions Court.

(vi) The applicant shall not leave jurisdiction of Mumbai and Thane till the conclusion of the trial.

(vii) Upon failure to attend two consecutive dates either in the Sessions Court or in the police station, the prosecution is at liberty to move for cancellation of bail.

16 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)