

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2151 OF 2014

Abdul Kudus Musir Khan.	... Applicant.
Versus	
The State of Maharashtra	... Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 550 OF 2015

Sagir Shafikullah Khan.	... Applicant.
Versus	
The State of Maharashtra	... Respondent.

Ms. Suvarna A. Vast, advocate for Applicant in BA 2151/14.

Ms. Anjali Patil, advocate for applicant in BA 550/15.

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

Ms. S.S. Kaushik, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 22, 2015

P.C.:

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

2 These are the applications under Section 439 of the Code of Criminal Procedure, 1973. The applicant in BA 2151/14 is arrested on 1/10/2013 and the applicant in BA 550/15 is arrested on 8/10/2013 in C.R. No. 313 of 2013 registered at Vashi Police Station for offence punishable under Section 363, 364, 302, 201, 120B, 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.

3 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.

4 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.

5 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 along 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.

6 In the meanwhile , i.e. on 28.9.2013, an unidentified dead body was found at Sanpada. Chandrashekhar Mahnadev 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.

7 Today in the course of hearing of these applications, the learned APP has placed on record the certificate issued by the department of Anatomy, Grant Government Medical College, Mumbai issued on 12th February, 2014. The conclusions drawn by the department of Anatomy is that sex of the deceased is probably male and the age of the deceased is probably more than 25 years. However, upper limit cannot be opined. The report issued by the Director of Forensic Science Laboratory shows that the investigating agency had obtained blood samples of Hajarunisa Anwarul Haq Ansari i.e. the mother of the deceased and Ansarul Anwarul Haq Ansari, who happens to be the brother of the deceased. The result of the analysis shows that no amplifiable DNA is obtained from femur bone and tooth of unknown. There is no specific conclusion drawn in respect of control DNA profile and it simply shows that control DNA profile is obtained. Analysis was completed on 22/9/2014.

8 Be that as it may, the learned APP Ms. Kaushik submits that the identity of the deceased is undisputed for the simple reason that when the dead body was seen for the first time, the body was identified to be that of deceased on the basis of certain documents in the pocket of the deceased. Initially, accidental death was registered. However, only after it was ascertained that the dead body was of the missing person mentioned in Missing Report No. 105 of 2013, the co-accused have been enlarged on bail by this Court. The applicant in Criminal BA No. 550 of 2015 was not put up for test identification parade. The learned APP submits that the whole plot was hatched by the applicant in Criminal BA No. 550 of 2015. Although there is no specific evidence that he was at the scene of offence, according the learned APP he had hatched the conspiracy and aided and abetted the co-accused to cause homicidal death of Mahibul Haq. The learned APP has placed reliance upon the statement of the co-accused. The said statement can be considered at the time of trial under Section 30 of the Indian Evidence Act. The learned APP has also placed reliance upon the statement of one Pooja Somnath Sharma recorded on 1st

October, 2013. In fact, on that date the accused in Criminal BA No. 2151 of 2014 was arrested.

9 By virtue of doctrine of parity as well as considering the period spent in jail, coupled with the fact that whole case rests upon the circumstantial evidence, this Court is inclined to grant bail to the applicants.

10 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.

11 Hence, the following order is passed :

ORDER

- (i) The applications are allowed.
- (ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or two sureties in the like amount.
- (iii) The applicants shall report to the concerned police station on 1st Sunday of every month till conclusion of trial.
- (iv) After releasing on bail, the applicants shall furnish their recent addresses, cell phone numbers, landline numbers and the other details to the investigating officer.

12 The applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)