

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE – CRIMINAL
BAIL APPLICATION NO.2597 OF 2014

Gulam Mohd. Hajrat Shaikh ... Applicant
Vs.
The State of Maharashtra ... Respondent

Ms Anjali Patil i/b Mr. Abhay B. Bhoir for the Applicant
Mrs. A.A. Mane, APP, for the Respondent – State.

CORAM: P.D. KODE, J.

DATED: JANUARY 16, 2015.

PC:

1. The Applicant, charge-sheeted by Vashi Police Station for commission of murder of one Ainul Shaikh and for causing disappearance of evidence of said murder, has prayed for bail. The Applicant is accordingly charge-sheeted by said police station as a result of investigation of Crime No.I-168 of 2014, registered with said police station upon FIR lodged by ACP Shivaji Bajirao Salunkhe after receiving information given by relatives of the deceased that corpse of deceased was seen in creek water in Sector 11 of Vashi and finding such a corpse at said place.

2. A perusal of the charge-sheet reveals that said police station had charge-sheeted the Applicant on the count that the Applicant was

having suspicion, that son of his relative Yusuf Shaikh viz. Akram Shaikh was kidnapped by the deceased and in order to obtain the whereabouts of said kidnapped Akram Shaikh the Applicant had taken the deceased to an isolated place and made him to consume liquor and thereafter, during the quarrel, had assaulted on the neck and leg of the deceased and committed his murder and in order to cause disappearance of evidence of said offence of murder, had thrown his corpse in the creek water.

3. Ms Anjali Patil, learned counsel for the Applicant submitted that entire case against the Applicant rests upon the circumstantial evidence, i.e. the deceased was lastly seen alive in the company of the Applicant on 4.5.2014 during the evening time at a tea stall at Juhugaon, the purported recovery of knife as a sequel to the statement leading to the discovery made by the Applicant and seizure of it, and so also the Applicant having pointed out the place of offence to the police. It is contended that the first circumstance of deceased being lastly seen alive by itself is of an innocuous nature, as both of them hailing from the same village. It is submitted that the alleged recovery of knife is also not a convincing circumstance as prosecution is having no material with them to establish nexus of said knife with the death of the deceased. It is submitted that apart from it, said recovery being from the same place

at which corpse was found, it is difficult to place much reliance upon said circumstance and so also another circumstance of the Applicant allegedly having pointed out the place at which the offence was committed. It is urged that the prosecution had not collected any material so-far for establishing the fact that at said place the deceased was assaulted and killed. It is submitted that said last circumstance by itself being in the nature of statement made by an accused during the course of investigation would be inadmissible in law. Lastly, it is contended that considering all said circumstances, prima facie, themselves being incapable of forming a formidable chain leading to sole inference of the guilt of the Applicant he is entitled for bail. It is urged that statement of the brother of the deceased, i.e. Niyamuddin reveals that the deceased was having many enemies and as such so called motive tried to be canvassed by the prosecution cannot be said to be an adequate motive for committing such heinous crime.

4. Mrs. Mane, learned APP, candidly admitted that the prosecution is relying upon the circumstances as pointed out by the learned counsel for the Applicant. It is urged that, however, it is far from true that there is no material to establish nexus of knife recovered with the corpse of the deceased. It is submitted that the prosecution has sent said weapon as well as the scrappings taken from the place which

was shown by the Applicant to C.A. and the report regarding the same is awaited. It is submitted that in event of positive material being received, the same would establish such chain pointing towards the guilt of the Applicant. It is submitted that the offence is of a heinous nature and as such the prayer for bail be negatived.

5. A careful perusal of the charge-sheet reveals that the prosecution material against the Applicant being in nature of the circumstances enlisted by the learned counsel of the Applicant. Now considering the fact that the police was knowing the place at which the corpse was found and recovery of the knife from the same place, and so also the place of offence allegedly shown by the Applicant, which is prima facie inadmissible in law, it is difficult to accept the submission canvassed that the same forms a formidable chain leading to prima facie inference of guilt of the Applicant. Needless to add that the Apex Court in its several decisions has ruled that the deceased being seen lastly alive in the company of culprit by itself is not a circumstance leading to inference of the guilt of said culprit. Having regard to it and the incredible nature of the other two circumstances, discretion deserves to be exercised in favour of grant of bail.

6. Resultantly, the application is allowed. The Applicant is directed to be released on bail in C.R. No.I-168 of 2014 registered with

Vashi Police Station, on furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties to make up like amount and subject to conditions that after his release the applicant shall (i) stay at his Bombay address mentioned in the application and shall not leave the area of Bombay and Thane without prior permission of the Trial Court; (ii) attend the I.O. on every Monday in between 4:00 p.m. to 5:00 p.m. for a period of two months and thereafter on every first Monday of the Month until further order; (iii) not, directly or indirectly, make any inducement, threat or promise to persons acquainted with the facts of the accusation against him so as to dissuade them from disclosing such facts to the Court or to any police officer; (iv) not indulge in activity of tampering, threatening, coercing, intimidating or pressurizing the prosecution witnesses in any manner; and (v) not misuse the bail granted vide this order for fleeing away or for committing any further offence.

6. The application accordingly stands disposed of.

(P.D. KODE, J.)