

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1039 OF 2016
IN
CRIMINAL APPEAL NO.500 OF 2016

Aliraza @ Salman Sirajuddin Shaikh	Applicant
versus	
The State of Maharashtra	Respondent

Mr.H.K.Mooman for Applicant.
Mr.J.P.Yagnik, APP, for State.

CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, J.

DATE : 24th October 2016

PC :

1. The Applicant was convicted and sentenced in Sessions Case No.786 of 2013 under Sections 302 of Indian Penal Code to suffer life imprisonment and under Section 201 of Indian Penal Code to suffer seven years rigorous imprisonment vide judgment and order dated 27 June 2016 delivered by learned Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai.

2. The Applicant was residing with his wife Parveen and mother. On 24 March 2013, the complaintant/Applicant lodged a missing report to Chunabhatti Police Station, Mumbai. PW-13 Bhanudas Dhondiram Dalvi (investigating officer) deposed before the Court that upon missing report lodged by Applicant herein, he instructed Detection Branch to search the Applicant. Police conducted investigation and recorded statements of witnesses. During the

course of investigation, it is the case of prosecution that Applicant-accused himself voluntarily disclosed the police that he had thrown dead body of his wife in Mithi river. At the instance of the Applicant-accused, the police visited BKC Creek (Mithi River) by a police vehicle. They stopped near BKC Creek. They walked for about 3 to 4 kilometers on both the sides of the creek and searched for the dead body of Applicant's wife. But police party could not find the dead body of Applicant's wife.

3. The prosecution has based its case on the evidence of PW 10 Saba Karim Shaha, aged 10 years, who deposed before the Court that she had seen the accused carrying the deceased in a gunny bag. Her evidence was supported by PW-2 Mehaboob Shaikh Shamshoddin Shaikh, who had asked the accused on the next day morning at 10 a.m. regarding his conduct on the earlier mid-night between 2.30 to 3 a.m. The prosecution places reliance on circumstances including evidence of co-accused Kaleem who was allegedly driving the scooter with Applicant being a pillion rider carrying dead body of wife of applicant and his subsequent conduct of throwing the body in BKC Creek.

4. Learned counsel for Applicant submits that co-accused has been acquitted. The case is based on circumstantial evidence. The Applicant was on bail during trial and by putting some conditions, he may be released on bail.

5. Learned APP submits that the evidence of PW-10 is crucial, who had seen the accused-Applicant carrying a gunny bag containing

body of deceased. The circumstances goes against applicant's innocence. In the alternative, learned APP submits that in case Court releases the Applicant on bail, then strict conditions be imposed on him.

6. We have seen original records and depositions of the witnesses. The PW-13 Bhanudas Dalvi, the investigating officer, deposed that the accused had taken them to BKC Creek bridge as narrated by accused. They walked for about 3 to 4 kilometers on both the sides of the creek. But they could not find the dead body. Therefore, a panchanama was drawn up and signatures of panchas and accused were obtained thereon (Exhibit-49). This is a case where dead body of the deceased was not found.

7. On the circumstances brought on record and in view of the fact that Applicant being on bail during the trial, we are of the view that Applicant's request of releasing on bail could be considered.

8. **ORDER**

(i) The substantive sentence imposed against the Applicant Aliraza @ Salman Sirajuddin Shaikh stand suspended;

(ii) The Applicant shall be released on bail in the sum of Rs.30,000/- with two sureties in the like sum;

(iii) The Applicant shall attend Chunabhatti Police Station, Mumbai once in a month, until further orders;

(iv) The Applicant shall intimate his residential address to Police;

(v) In case Applicant violates the conditions of bail, the prosecution would be at liberty to take appropriate steps.

9. The application stands disposed of.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

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