

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 912 OF 2017  
IN  
CRIMINAL APPEAL NO. 513 OF 2014**

**WITH  
CRIMINAL APPLICATION NO. 223 OF 2016**

|                                     |          |                    |
|-------------------------------------|----------|--------------------|
| <b>Sakib Rafathussein Ghadiyali</b> | <b>}</b> | <b>Applicant</b>   |
| <b>versus</b>                       |          |                    |
| <b>The State of Maharashtra</b>     | <b>}</b> |                    |
| <b>and Ors.</b>                     | <b>}</b> | <b>Respondents</b> |

Mr. S. G. Kudle for the applicant.

Ms. S. V. Sonawane-APP for State.

**CORAM :- S. C. DHARMADHIKARI &  
SMT. BHARATI H. DANGRE, JJ.**

**DATED :- NOVEMBER 8, 2017**

**P.C. :-**

1. This is an application for bail.
2. Mr. Kudle appearing for the applicant-accused would submit that the applicant is seeking bail essentially on parity.
3. It is correct that a criminal application seeking bail was filed by this accused earlier being Criminal Application No. 929 of 2014, but after some arguments, that was withdrawn.

4. Mr. Kudle submits that the co-accused in this case was granted bail and subsequent to the earlier order on the applicant's application for bail dated 30<sup>th</sup> July, 2014. The Division Bench, while granting bail to the co-accused Mukarramali Masarratali Khan in Criminal Application No. 990 of 2015, held that *prima facie* there are no eye witnesses to the incident. The prosecution has relied upon two circumstances against the co-accused, one of which is the theory that he was last seen in the company of this accused and recovery of certain articles at the instance of the co-accused. The Division Bench held that as far as the theory of last seen is concerned, the trial court has disbelieved this circumstance. The trial court has assigned reasons, which, to the mind of the Division Bench, are *prima facie* cogent. The remaining circumstance was the recovery of articles.

5. Mr. Kudle would submit that there is difference in recovery of weapons and recovery of articles belonging to the deceased. As far as that recovery is concerned, this court observed that there is a discrepancy in the identification of these articles and therefore, proceeded to enlarge the co-accused on bail.

6. Mr. Kudle would submit that the role ascribed to the present applicant is identical to that of the co-accused. As far as this accused is concerned also, the theory of last seen has been disbelieved and by assigning reasons. The only remaining circumstance is identical on par with the co-accused, namely, recovery of articles. Therefore, on the

ground of parity and with similar conditions, this accused-applicant should also be enlarged on bail.

7. Ms. Sonawane learned APP, on the other hand, would submit that as far as the present applicant is concerned, PW-1 has deposed that the articles belong to the deceased and recovered at his instance were two mobile phones, gold chain and cash. She would submit that the mobile phones having been recovered and belonging to the deceased distinguishes the case of this applicant with that of the co-accused.

8. Having perused the materials, particularly the statement of PW-1 at page 194 of the paper book, *prima facie*, we do not think that because of the two mobile phones having been recovered, any distinction can be made. In the present applicant's case as well, recovery of certain articles and allegedly belonging to the deceased was made. There, the gold chain and cash also is stated to be recovered. Once this court has made a *prima facie* observation with regard to the discrepancy in these recoveries, then, we cannot, *prima facie*, on the strength of these two mobile phones, make any distinction of the applicant's case with that of the co-accused.

9. Hence, we are of the opinion that on account of the changed circumstances of grant of bail to the co-accused, the applicant is entitled to be enlarged on bail.

10. The applicant – Sakib Rafathussein Ghadiyali be released on bail on executing a P. R. Bond in the sum of Rs.35,000/- with one surety in the like amount. The applicant shall report to M. R. A. Marg Police Station once in a week. The applicant shall not leave Mumbai without prior permission of this court.

11. With the aforesaid directions, both the criminal applications are disposed of.

(SMT. BHARATI H. DANGRE, J.)

(S.C.DHARMADHIKARI, J.)