

Vidya Amin.

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

**CRIMINAL APPLICATION NO. 126 OF 2018
IN
CRIMINAL APPEAL NO. 601 OF 2014**

Mohd Azam Aslam Butt ... Applicant
vs.
The State of Maharashtra ... Respondent

**WITH
CRIMINAL APPLICATION NO. 617 OF 2018
IN
CRIMINAL APPEAL NO. 601 OF 2014**

Parwati Chandrakant Gharat ... Intervenor
in the matter between
Mohd Azam Aslam Butt ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Rajendra Raghuvanshi, Advocate a/w. Mr. Abdul Kader Millwala i/b. Milan A. Hebballi, Advocate for the applicant, in APPA/126/2018.

Mr. Rajesh P. Khobragade, Advocate for the applicant in APPA/617/2018.

Mrs. M.M. Deshmukh, APP for the respondent-State.

**CORAM: Mr. S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ..
DATED: 27th September, 2018**

P.C. :

1. Criminal Application No. 126 of 2018 is moved by the applicant-accused for bail in Appeal, which is directed against the judgment and order dated 21st June, 2014 passed by the learned

Additional Sessions Judge, Greater Bombay thereby convicting the applicant/accused for the offences punishable under section 302 of Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- and in default to suffer R.I. for one year. The applicant-accused is also convicted for the offences punishable under sections 364, 201 of Indian Penal Code and under section 25(i-b)(a) r/w. Section 3 of the Arms Act.

2. PW-2 Usha Kashinath Gharat is the wife of deceased Kashinath Gharat. Kashinath Gharat was dealing in construction business. In the year 2001, Kashinath has lent an amount of approximately Rs.14,00,000/- to the father of the applicant-accused, out of which, Rs. 10,00,000/- were returned to Kashinath Gharat. On 8th September, 2005, Kashinath Gharat told his wife that the applicant-accused has called him to collect remaining amount of Rs.3,85,000/- at Pizza Hut, Andheri. So he went there. As there was immersion of Lord Ganesh, Kashinath told his wife that he will return for Ganpati immersion. However, he did not come back. She tried to contact on his mobile number but it was not reachable. At last, she lodged missing complaint no. 126 of 2005 at Oshiwara Police Station on 9th September, 2005. The

applicant-accused was arrested on 12th September, 2005. On the information given by the accused, the dead body of deceased Kashinath was recovered from the mud and muck near mangrove. The iron rod and pistol were also recovered at his instance. The police registered offence under sections 302, 343, 201 r/w. 34 of Indian Penal Code at C.R. No. 585 of 2005 against the applicant-accused. Along with the applicant-accused, three other accused were arrested. After the trial, other three accused were acquitted and present applicant-accused was convicted for life for the offence of murder.

3. The learned counsel for the applicant-accused has submitted that the prosecution did not prove its case beyond reasonable doubt. The prosecution could not establish any nexus between the offence of murder and the applicant-accused. Nobody has seen the applicant-accused and deceased together. The prosecution could not bring any evidence on actual commission of the offence. The memorandum panchnama prepared by P.I. Mr. Mahajan of recovery of body and the weapons is doubtful, as other police personnel and pancha did not take the name of applicant-accused in panchnama. He submitted that

the prosecution has failed to prove discovery panchnama and thus, the conviction on such inadequate and probable evidence is not sustainable. He further submitted that the incident has taken place in 2005 and the applicant-accused was on bail till he was convicted.

4. Learned APP vehemently opposed this Application and argued that there is sufficient evidence against the applicant-accused. She relied on the evidence of PW-1 Ramakant Chandrakant Gharat, brother of deceased; PW-2 Usha Kashinath Gharat, wife of the deceased; PW-4 Ravindra Sadashiv Phadake, panch witness of the discovery panchnama. She pointed out that in the missing report which was lodged in the police station on 9th September, 2005, the name of this applicant-accused was disclosed by the wife of the deceased. Thereafter the body was found at the instance of the applicant-accused. The learned trial Judge has rightly given proper weightage to this material and clinching circumstance. She further submitted that the applicant-accused is having criminal record. When he was on bail, he committed an offence. She submitted that 4 to 5 cases were registered against the applicant-accused including the threats

given by him to the complainant in this case. She submitted that though the applicant/accused is acquitted from that offence, there is criminal record against him and there is every likelihood that if at all he is released on bail, he will commit further offence.

5. Perused the record before us. Heard the submissions of the learned senior counsel for the applicant-accused and the learned APP. In evidence, PW-2 Usha Kashinath Gharat has stated that she gave missing report about her husband on the next day, i.e., on 9th September, 2005 wherein the name of the applicant-accused is seen as suspect. Considered the evidence of PW-4 Ravindra Phadaka, panch on discovery panchnama and the panchnama where the body of the deceased was found in mangrove generally which is not approachable. There is a report of ballistic expert stating that the bullet shot to the left side of the chest of deceased is the bullet which was shot from the same revolver recovered at the instance of the applicant-accused. In view of these circumstances, we are not inclined to grant bail to the applicant-accused. Hence, Criminal Application for bail is rejected.

6. Criminal Application No. 617 of 2018 is filed by the

applicant, wife of the deceased, that she be added as respondent in Criminal Appeal No. 601 of 2014.

7. The applicant, being the original complainant, her application for adding her as party-respondent in the Appeal is allowed.

8. Criminal Application No. 617 of 2018 is allowed and is accordingly disposed of.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)

Vidya
Suresh
Amin

Digitally signed
by Vidya Suresh
Amin
Date:
2018.09.29
15:08:01 +0530