

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 269 OF 2018

Mohd. Nooruddin Mohd. Ayub SiddiquiApplicant.

vs.

State of MaharashtraRespondent.

Mr. Khan Fakhrauddin for the applicant.

Mr. S.S.Hulke, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.

DATE : 12th June, 2018

P.C.

1. This is an application under Section 439 of the Cr.P.C. for bail in CR. No. I-54/2017 dated 14.2.2017 registered with Turbhe MIDC Police Station Navi Mumbai under Sections 302, 392, 397, 201 read with 34 of the Indian Penal Code (now culminated into Sessions Case No.327 of 2017).

2. Heard the learned counsel for the applicant and the learned APP. Perused the charge sheet.

3. The prosecution case in brief is that, the accused No.1 Mohd. Yahia Mohd. Yunus Siddiqui and deceased Mohammed Hasim Mohd Jumrati were labourers and there used to be quarrel amongst their respective wives on petty counts. That, the accused No.1 Mohd. Yahia Mohd. Yunus Siddiqui along with present applicant thereafter decided to eliminate

Mohammed Hasim Mohd Jumrati and in furtherance of their plan took the deceased near hotel Vishal situated at Turbhe MIDC, Navi Mumbai and committed his murder by strangulation and also by banging the head of the deceased on stones. During the course of investigation the applicant came to be arrested on 17.2.2017 and after completion of investigation the police have submitted charge sheet before the Court of competent jurisdiction.

4. The prosecution has propounded two major circumstances against the applicant i.e. i) last seen together and ii) name of the applicant has been disclosed by accused No.1- Mohd. Yahia Mohd. Yunus Siddiqui as accomplish.

As far as the circumstance of 'last seen together' is concerned the prosecution has relied upon the statement of Mr. Prashantkumar Barik a betel leaf shop owner located near Hotel Vishal. The said witness has stated that on 12.2.2017 at about 10.30a.m. two persons had been to his stall for purchasing betel leaves and at that time the said persons disclosed their respective names to him. Prima facie, it is very difficult to believe the version of the said witness as the accused were strangers to the said shopkeeper and therefore,

there was no reason for the accused to disclose their names after purchasing betel leaves and therefore prima facie the said circumstance creates doubt in the mind of the Court. As far as second circumstance i.e. disclosure of name of applicant by co-accused Mohd. Yahia Mohd. Yunus Siddiqui as in present crime in disclosure panchanama dated 23.3.2017 is concerned, the said disclosure made and given to the police by co-accused, disclosing the name of the accused is hit by Section 25 and 26 of the Evidence Act and cannot be taken into consideration as a substantive piece of evidence.

5. In view of the above, the applicant can be released on bail.

Hence, the following order.

a) The applicant be released on bail in CR.No. I-54/2017 dated 14.2.2017 registered with Turbhe MIDC Police Station Navi Mumbai (now culminated into Sessions Case No.327 of 2017) and pending on the file of Additional District Judge -4 and Additional Sessions Judge, Thane) on his furnishing PR bond of Rs.25,000/-with one or two solvent local sureties in the like amount.

b) After his release from Jail, the applicant shall attend the

Turbhe MIDC Police Station, Navi Mumbai on every first Monday of the month between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial.

c) The applicant shall attend all the dates before the Trial Court unless precluded for medical reasons.

d) Any two consecutive defaults in complying with the aforestated conditions will attract the provisions of cancellation of bail.

e) The applicant shall not tamper with the evidence and /or influence the prosecution witnesses.

f) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)