

*Nalawade*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTIONBAIL APPLICATION NO. 1344 OF 2018
Irshad Ali Allarakha Shah vs. The State of Maharashtra

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Ms. Misbaah Solkar with S. Shaikh i/by Amin Solkar for the Applicant.

Mr. Ameet Palkar, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 28th June, 2018

P.C.

1. This is an application under Section 439 of the Cr.P C. for bail in CR No.126/2006 dated 14.5.2006 registered with J.J. Marg Police Station, Mumbai under Sections 302, 201 read with 34 of the Indian Penal Code.

2. The prosecution case in brief is that, on 14.5.2006 torso was found wrapped in a plastic bag near Mastan Talao, Bhendi Bazar, Mumbai. The head and limbs of the said corpse could not be traced out and it is alleged that the accused persons had caused disappearance of the same.

The Investigating agency tried to determine DNA profile of the said torso by extracting certain body portions of it however, the Forensic Science Laboratory on 27.7.2007 has given a report that from the blood stained gauze no DNA profile could be obtained by the laboratory.

It is the further prosecution case that, the investigating agency received secret information in the month of January 2018 thereby leading to the clue of the murder of one Mr. Kisan Kharva. It was also revealed to the Investigating agency that, the torso which was found at Mastan Talao Cross road, Near Municipal Urdu School, Bhendi Bazar was of the said person Kisan Kharva. After getting the clue of the said murder, the Investigating Agency arrested i) Smt. Bansiben Kisan Kharva, aged 60 years, ii) Firasat Ali A. Shah, aged 48 years and the present applicant on 10.1.2018. It is the further prosecution case that, the deceased Kisan Kharva was addicted to liquor and used to abuse and beat his wife accused No.1-Smt. Bansiben Kharva. The deceased also used to take doubt about the chastity of his wife and was attempting to put his

daughter in some illegal vocation. That, the accused No.1- Smt. Bansiben Kharva therefore, gave contract to accused No.2-Firasat Ali to eliminate Kisan Kharva. It is further alleged that, the accused Firasat Ali thereafter committed murder of Kisan Kharva at his own residence at Bhendi Bazar and with a view to screen the offence cut the parts of the body and threw it at different places.

As noted earlier, the applicant came to be arrested on 10.1.2018 and after completion of investigation, the police have submitted charge sheet.

3. Perusal of the charge sheet would indicate that, after the arrest of the applicant on 10.1.2018 the police have recorded statement of one witness namely Mr. Rizwan Yusuf Shaikh on 17.1.2018 i.e. after a gap of about seven days from the date of arrest of the applicant. It is stated that, the applicant had given extra judicial confession to the said witness nine years prior to the date of recording of his statement revealing the entire plot of murder of Kisan Kharva. It is to be noted here that, the said witness did not disclose the said fact of commission of murder of Kisan

Kharva by the applicant and his brother Firasat Ali either to the police or any other person and kept mum for the reasons stated in his statement. The prosecution will have to explain the said delay of nine years at the behest of the said witness in giving statement/information to the police at the time of trial. Apart from the said alleged extra judicial confession given by the applicant nine years prior to his arrest, the record indicates that, prima facie there is no other material available on record against him.

4. 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.126/2006 dated 14.5.2006 registered with J.J. Marg Police Station, Mumbai 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 concerned Police Station on every first Monday of the month between 11.00 a.m. to 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 afore stated conditions will attract the provision 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.)