

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 916 OF 2018
IN
CRIMINAL APPEAL NO. 679 OF 2016

Mehboob Kasam Shaikh & Anr. ... Applicants
Vs.
Union Territory of Dadra & Nagar Haveli ... Respondent

Mr. C.R. Mishra a/w. Mr. S.V. Naik, Advocate for the applicants.
Ms. Purnima H. Kantharia, Advocate for the respondent.

CORAM: **MR. S.S. SHINDE &**
MRS.MRIDULA BHATKAR, J.
DATE: **21st August, 2018.**

P.C.:

Heard the learned counsel appearing for the applicants and
the learned Additional Public Prosecutor appearing for the State.

2. The learned counsel appearing for the applicants invited our attention to the investigation of the prosecution witnesses and submitted that none of the witnesses have stated about the involvement of the present accused. He pointed out the inconsistency in the statements of the prosecution witnesses. He submitted that there is complete mismatch of the timing stated by the witnesses. He further submitted that if the medical evidence is considered in its entirety and in particular cross-examination, it is

abundantly clear that the deceased Ayub @ Gaffar Isaq Sheikh died in an accident. He submitted that merely relying upon the confessional statement of the appellants, there cannot be conviction. He submitted that such statement made by the appellants was not admissible. He submitted that the prosecution has not explained the injuries sustained by accused no. 1. He submitted that there is no evidence as against accused no. 2. Therefore, the learned counsel prays that the applicants be released on bail by suspending the substantive part of sentence during the pendency of this Appeal.

3. On the other hand, the learned Additional Public Prosecutor appearing for the State invites our attention to the deposition of PW-5, PW-6 and PW-1 and other evidence collected during the course of investigation by the Investigating officer and the finding recorded by the trial Court and submitted that the finding recorded by the trial Court are sustainable. Therefore, she submits that the application for bail may be rejected.

4. We have carefully considered the submissions of the learned counsel appearing for the applicants and the learned Additional Public Prosecutor appearing for the State and have perused the

deposition of PW-5, PW-1 and of other prosecution witnesses. The prosecution has brought on record sufficient evidence to show the involvement of the applicants. There are incriminating circumstances and material collected during the course of investigation. The clothes of the accused were recovered. Those were blood stained. The knife was also recovered. It is not desirable to elaborate the reasons since the Appeal filed by the appellants is pending. Suffice to say that *prima facie* the finding recorded by the trial court is correct. Hence, the Application stands rejected. However, we make it clear that in case the Appeal of the appellants is not taken up for hearing within one year from today, liberty granted to move another application for bail and suspending sentence.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)