

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

**CRIMINAL APPLICATION NO.1549 OF 2017
IN
CRIMINAL APPEAL NO., 576 OF 2016
WITH
CRIMINAL APPEAL NO. 578 OF 2016
WITH
CRIMINAL APPEAL NO. 599 OF 2016**

Najim Kalam Khan

....Appellant

vs.

The State of Maharashtra

....Respondent

Mr. Hrishikesh Munderg i/by Madan Gupta for the Appellant.
Mrs. Rohini Salian, Special PP for the State.

**CORAM : B.P.DHARMADHIKARI &
SMT. SWAPNA S. JOSHI, JJ.
DATE : 24th June, 2019**

PC :

1. Applicant-original accused No.1 seeks release on bail pointing out that this court has already released accused No.4 and accused No.2 on bail and presently he is the only convicted person left behind the bars. Our attention has been invited to orders dated 27.7.2018 and 31.1.2019 releasing accused Nos. 4 and Accused No.2 respectively on bail. In addition,

it is pointed out that identification by alleged eye witness is itself doubtful because in test identification parade, he identified accused No.2 and took his name as Najim i.e. he gave accused No.2 name of accused No.1. It is submitted that accused No.1 was also part of very same test identification parade and he was not indicated as accused at that juncture.

2. Our attention is also drawn to recovery of knife (alleged weapon) under Section 27 submitting that the knife is shown to be recovered from trunk of taxi and it is claimed that it was hidden beneath gas cylinder fitted therein, thus, recovery under Section 27 is not free from doubt.

3. Learned APP on the other hand relies upon evidence of P.W.1 who claims that he saw accused persons immediately after the incident, certificate issued under Section 65B of the Evidence Act with CDR record to show tower location, recovery of knife and also recovery of blood stained clothes from accused persons. In addition, she pointed out that photograph of deceased with her name on it was also found in wallet of accused No.1 when his personal search was taken after arrest. She submits that DNA from blood stains on clothes of deceased, on clothes of accused No.4 and accused No.1 also matched. The knife though recovered from the trunk of taxi after three months, had human blood. According to her mere

circumstances distinguish the case of applicant from other accused persons.

4. In brief reply, the learned counsel for applicant submits that recovery of photograph from wallet of accused, that too of a person who is allegedly murdered by him prior to three months, is itself not free from doubt. The story that said photograph was handed over by accused No.4 to him has not been established as there is no evidence regarding handwriting and remark which is on its back side. Similarly the trial court has not accepted the CDR record and the conspiracy.

5. Perusal of evidence of P.W.7 shows that in chief he deposed about disclosure statement made by applicant and place of hiding weapon at Antop Hill. This place does not find mention in disclosure panchanama. The recovery is actually from trunk of taxi in use and from beneath the gas cylinder fitted in it.

6. The recovery of blood stains clothes from present applicant (accused No.1) and DNA report do not remain very relevant at this stage since this court has already given bail to accused No.4 and accused No.2.

7. The report of DNA analysis at Exhibit-215 shows DNA profile match of blood found on accused persons with DNA match blood of deceased Beena.

8. Perusal of evidence of P.W.1 shows that in test identification parade he identified only one person and that person was accused No.2. Finding a photograph of murdered victim in wallet of accused three months after murder is prima facie unacceptable.

9. The observations of this court in order dated 31.1.2019 show that the telephonic conversation is also disbelieved. This court then was not required to look into recovery of weapon from accused No.1 as it was considering the application of accused No.2. Perusal of order dated 27.7.2018 passed in the matter of accused No.4 again shows that telephonic conversation has not been accepted and the handwriting appearing on the backside of photograph is also not found to be an incriminating circumstance .

10. In this situation, we find that the present applicant is also entitled to be released on bail during the pendency of this appeal. Accordingly, we pass the following order.

ORDER

- a) The order of sentence imposed on the applicant Najim Kalam Khan stands suspended till the final hearing of the appeal;
- b) The applicant shall be enlarged on bail in the sum of Rs.25,000/-

(Rupees twenty five thousand only) with one or two solvent and local sureties in the like amount;

c) Bail is granted subject to condition that the applicant will furnish a detailed address of his place of residence where he proposed to stay after he is enlarged on bail and contact telephone number to the Jail Superintendent;

d) Bail is granted subject to condition that the applicant will report to the learned Trial Judge on first Monday of January and July of every calendar year at 11.00 a.m. till the disposal of the appeal;

e) In the event, the learned Trial Judge finds that the applicant has committed any breach of the conditions, he will forthwith submit a report to that effect to the Registrar (Judicial-I) who will place the same before the concerned Bench;

f) Application is disposed off on above terms.

(SMT. SWAPNA S. JOSHI, J.)

(B.P.DHARMADHIKARI, J.)