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

CRIMINAL BAIL APPLICATION NO.504 OF 2020

Saijuddin Harun Qureshi @ Pappu ...Applicant

Versus

The State of Maharashtra and Anr. ...Respondents

Mr. Rajiv Patil, Senior Advocate a/w Mr. Prashant M. Patil, for the Applicant.

Mr. A. R. Patil, A.P.P. for the Respondents - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd NOVEMBER, 2020

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned senior counsel for the applicant and learned APP for the Respondents- State.

2. This is the second bail application preferred by the applicant seeking his enlargement on bail in connection with C.R.No.30 of 2019 registered with the DCB, CID, Unit-II, Mumbai, for the alleged offences punishable under Sections 302, 201, 120B r/w 34 of the Indian Penal Code.

3. Learned Senior Counsel for the applicant submits that the change of circumstance warranting filing of the aforesaid application is grant of bail to accused No.3 – Wakil Ahmed Yasin Shaikh on 23rd October, 2020. He submits that even otherwise there is no material to connect the applicant with the alleged offences. He submits that admittedly the applicant was not present at the spot at the time of the alleged incident and that there is no material to throw light on the point of conspiracy to kill the deceased – Aklakh Khan. He submits that there was no motive for the applicant to kill the deceased nor is there any material to show that the applicant knew the deceased. He submits that the applicant has no antecedents and that the applicant is in custody in the said case since 2019. Learned Senior Counsel submits that the statement of Shahid Rafiq Khan @ Shahenshah does not throw any light on the aspect of conspiracy. He submits that in the meeting that took place on 13th January, 2014 at about 11.30 p.m., the issue of payment of money for releasing a person on bail was resolved, after which accused No.3 – Wakil Shaikh and deceased – Aklakh Khan left together, after which Aklakh Khan called Shahid Rafiq Khan @ Shahenshah and asked him to meet him on the next day and that within a few minutes thereafter, the police informed Shahid Khan @ Shahenshah that Aklakh Khan had met with an accident. He further submits that nothing incriminating has been recovered at the instance of the

applicant.

4. Learned APP opposed the application. He has filed an affidavit of Sanjay Devram Nikumbe, Police Inspector attached to DCB, CID, Unit – II, Mumbai. Learned APP relied on the statement of Parvez Khan, Shahid Khan @ Shahenshah and other statements, in support of his submission.

5. Perused the papers. The alleged incident in which deceased – Aklakh Khan expired took place in the intervening night of 13th and 14th January, 2014. Initially, the police of Wadala T.T Police Station, registered C.R. No.14 of 2014, as against an un-known person i.e. driver of the vehicle under Section 304A of the Indian Penal Code r/w 134(a)(b) of the Motor Vehicles Act. In the said complaint, it was alleged that the driver of the vehicle gave a dash, as a result of which Aklakh Khan, who was driving a bicycle sustained injuries and expired. It appears that as there was no progress in the investigation carried out by the Wadala T.T Police Station the police filed a 'A' Summary Report before the learned Additional Chief Metropolitan Magistrate, 29th Court, Dadar, Mumbai, on 5th November, 2014. It appears that in 2019, the DCB, CID, Unit-II, Mumbai, received information from their sources that the accident that took place on 14th

January, 2014, in which Aklakh Khan expired was not an accident but a well planned murder. According to the prosecution, accused No.3 – Wakil Shaikh had given a contract to kill Aklakh Khan to the applicant, the owner of the truck, who in-turn engaged accused No.1 - Amol Pasoba to execute the said plan i.e. to kill Aklakh Khan. It appears that after enquiry the DCB, CID, Unit-II, Mumbai, registered the said offence vide C.R. No.30 of 2019 on 20th March, 2019. During the course of investigation, accused No.1 – Amol was arrested on 21st March, 2019. During the investigation, the police learned that the vehicle i.e. the truck which was used in the commission of the offence, was owned by the applicant's wife and that the applicant and accused No.3 – Wakil Shaikh had conspired with each other and planned to kill the deceased – Aklakh Khan. During the course of investigation, the truck was seized, at the instance of the applicant. Nothing incriminating was found from the applicant. According to the prosecution, there was some money transaction between the accused No.3 – Wakil Shaikh and deceased – Aklakh Khan for releasing Rashid Ali, a cousin of witness – Mohd. Kounen Tayab Ali, on bail. It appears from the statement of the witnesses that a meeting was held on 13th January, 2014 at about 11.30 p.m. at Sahil Hotel, Chembur Phatak, Mumbai, which was attended by deceased – Aklakh Khan, accused No.3 – Wakil Shaikh and witnesses – Mohd. Kounen Tayab Ali and Shahid Khan @ Shahenshah. Thus, the deceased

was last seen with accused No.3 – Wakil Shaikh. After the issue of payment was resolved, accused No.3 – Wakil Shaikh, left the spot with the deceased on his bike. It appears from the statement of Shahid Khan @ Shahenshah that at about 12.17 hrs, he received a call from deceased – Aklakh Khan asking him to meet him on the next day. According to the statement of Shahid Khan @ Shahenshah, within a few minutes thereafter, the police called him from deceased – Aklakh Khan's mobile and informed him that the Aklakh Khan had met with an accident. It is not in dispute that the applicant's first bail application being Criminal Bail Application No.2088 of 2019, was withdrawn by the applicant as the Court was not inclined to enlarge the applicant on bail. The said order is dated 16th October, 2019. Thereafter on 23rd October, 2020, this Court (Coram : Sarang V. Kotwal, J.) enlarged accused No.3 – Wakil Shaikh on bail. Accused No.3 – Wakil Shaikh is allegedly the mastermind of the alleged offence, who allegedly had motive to kill the deceased – Aklakh Khan. As far as the applicant is concerned, he is alleged to have been given a contract by accused No.3 – Wakil Shaikh to kill deceased – Aklakh Khan, pursuant to which, the present applicant is alleged to have send co-accused - Amol Pasobal i.e. accused no.1 to kill the deceased – Aklakh Khan. The applicant stands on a better footing than co-accused - Wakil Shaikh, who has been released on bail. *Prima facie*, there is no material to show that there was

any conspiracy between the applicant and accused No.3 to kill Aklakh Khan. The applicant has no antecedents.

6. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms & conditions :-

O R D E R

- i) The Applicant be released on cash bail in the sum of Rs. 25,000/-, for a period of four weeks;
- ii) The Applicant shall within the said period of four weeks, furnish P. R. Bond in the sum of Rs. 25,000/-, with one or two sureties in the like amount;
- iii) The Applicant shall attend the concerned Police Station, once in two months on the first Saturday, between 10:00 a.m. and 11:00 a.m., till the conclusion of the trial;
- iv) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

v) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;

vi) The Applicant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

vii) An undertaking to the aforesaid clauses (ii) to (vi), shall be filed by the Applicant, in the Registry of the trial Court, within two weeks of his release;

viii) If there are 2 consecutive defaults either in attending the Police Station or in appearing before the trial Court or breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of Applicant's bail.

7. The Application is allowed and disposed of in above terms.

8. It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in

accordance with law, uninfluenced by the observations made in this order.

9. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.