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IN THE HIGH COURT OF BOMBAY AT GOA
Criminal Application (Bail) No.65 of 2021 (Filing No.)

KHAYYAD @SHAFI
SHAIKH, PRESENTLY
LODGED AT COLVALE
JAIL, COLVALE

APPLICANT

Versus

STATE, THR. P.I,
ATTACHED TO PORVORIM
POLICE STATION,
PORVORIM AND ANR

RESPONDENTS

Mr. Menino Teles, Advocate for the Applicant.

**Mr. Pravin Faldessai, Additional Public Prosecutor for
the Respondent-State.**

CORAM: MANISH PITALE, J

DATED: 14th October 2021

Oral Order :

1. By this application, the applicant (original accused no.1) is seeking bail in respect of offences registered against him and six other accused persons as per First Information Report (FIR) dated 14/10/2020 registered under sections 302, 120-B r/w 34 of the Indian Penal Code.

2. The FIR in the present case was registered at the behest of the wife of the victim. The victim was burnt alive in a ghastly incident that took place on 14/10/2020. The victim was admitted to the hospital and he passed away the next day. The applicant in the present case was arrested on 18/10/2020, for his alleged role in the aforesaid crime.

3. The case of the prosecution appears to be that the accused no.1 is a builder and was facing the consequences of complaints filed by the informant and her husband i.e. the victim, as regards alleged illegalities undertaken in the construction business. It is alleged that the accused no.1 in conspiracy with the other accused persons decided to do away with the victim. It is alleged that the accused no.3, is a history sheeter and he was engaged for carrying out the aforesaid act with the help of his associates.

4. The prosecution alleges that on 20/9/2020, the accused persons met at a Cafe and it could be inferred that a conspiracy to assault the victim was hatched on the said date. It is alleged by the prosecution that the CCTV footage clearly shows that the applicant herein was present in the cafe on the said date. The applicant is the brother-in-law of the accused no.-1 and he also was given a flat in the building in question in respect of which the victim and his wife i.e. the informant had made complaints against the accused no.1. It is alleged that the applicant was also involved in the said crime.

5. Mr. Teles, the learned counsel appearing for the applicant submitted that in the present case, even according to the prosecution, the master mind of the crime was accused no.1. The

accused nos.2, 3 and 5 were allegedly directly involved in the act in question, resulting in serious burn injuries to the victim, who ultimately died. It is submitted that the role attributed to the applicant (accused no.4) and accused no.7-Shailesh Shetty is similar and that this Court has granted bail to the said accused no.7, by order dated 19/5/2021 passed in Criminal Application (Bail) No.394 of 2021. It is submitted that there is no material with the prosecution to link the applicant with the said crime, other than his presence in the meeting at the said Cafe on 20/9/2020, when the conspiracy was allegedly hatched. The learned counsel for the applicant submitted that on parity with accused no.-7, the present applicant is entitled to grant of bail

6. Mr. Pravin Faldessai, the learned Additional Public Prosecutor on the other hand submitted that the case of accused no.7 was distinguishable from that of the applicant herein. It was submitted that even the CCTV footage shows that the accused no.7 was sitting on a table other than the table on which the other accused were sitting. It is further submitted that in so far as accused no.7 is concerned, it was alleged that a vehicle belonging to the said accused had been sold to the co-accused and on the said date, i.e. 20/9/2020, the accused no.7 had perhaps reached the said Cafe in order to exchange some documents pertaining to the vehicle. It was submitted that the said facts were not comparable to that of the applicant herein, who was the brother-in-law of accused no.1. He was having the same motive as accused no.1 to commit the aforesaid crime. It was submitted by the learned Additional Public Prosecutor that the order passed by this Court while dismissing the bail application of the accused no.1 clearly records that the CCTV footage was seen by this Court and

a finding was rendered that a conspiracy was indeed hatched on 20/9/2020. Since the presence of the applicant cannot be denied in the said meeting, it was submitted that the present bail application deserves to be dismissed.

7. In the present case, there can be no doubt about the fact that the crime in question was committed in a most ghastly manner in which the victim suffered serious burn injuries and he was in hospital and ultimately died on the next date. But, the question for consideration in the present the case is as to whether the material on record could prima facie link the applicant with the aforesaid crime.

8. The factors on which the prosecution has placed much reliance are, firstly, presence of the applicant in the meeting dated 20/9/2020 at the aforesaid Cafe where the conspiracy was allegedly hatched. Secondly, that the applicant is the brother-in-law of accused no.1 and thirdly, that the applicant was allotted a flat by the accused no.1 in the very building in the context of which the victim and his wife i.e. the informant had been lodging complaints against the accused no.1. According to the prosecution, these factors are enough to demonstrate a prima facie case against the applicant for denying him bail.

9. This Court has perused the material on record. The contention raised on behalf of the applicant is that the material on the basis of which the applicant is attributed a role in the present crime is similar to the material that is alleged against the accused no.7. There is no doubt about the fact that the accused no.7 has been granted bail by this Court. The only distinguishing

factor is the discussion in the order passed by this Court in favour of the accused no.7 pertaining to the vehicle in question. Apart from that, the material held by the prosecution against accused no.7 is his presence in the Cafe on 20/9/2020, as per the CCTV footage and nothing else. In the present case also, the prosecution alleges that since the applicant was present in the Cafe on 20/9/2020, it was enough to demonstrate that the applicant was part of the conspiracy to commit the crime on 14/10/2020. This Court is of the opinion that merely because the applicant was seen in the CCTV footage of the Cafe dated 20/9/2020, that in itself cannot be a factor to show prima facie involvement of the applicant in the crime in question. Although, the learned Additional Public Prosecutor submits that this Court has already reached a finding, in the order dismissing the bail application of accused no.1, that the conspiracy was hatched on 20/9/2020, the fact as to whether the conspiracy was indeed hatched on the said date for committing the crime on 14/10/2020, would be a matter of evidence and trial. Although the CCTV footage would show the presence of the applicant on the said date, this Court is of the opinion that such material in itself prima facie would not show the direct involvement of the applicant in the crime in question.

10. The other factor on which the prosecution has placed much emphasis is the assertion that the applicant is the brother-in-law of the accused no.1. This cannot be a sole reason for holding that a prima facie case is made out against the applicant. The allegation that the applicant was allotted a flat in the building in respect of which the victim and the informant had submitted complaints against the accused no.1, can also not be a reason at this stage to reach a strong prima facie finding that even the

applicant had a motive to do away with the victim. The material on record appears to indicate that the accused no.1, being a builder and the person facing the effect of the complaints lodged by the victim and his wife i.e. the informant, was the person who could have harboured a motive to commit the crime against the victim and the informant.

11. This Court is of the opinion that at this stage the applicant has made prima facie case for grant of bail. The applicant has remained in custody for almost one year and considering the aforesaid material on record, particularly, when accused no.7 is already enlarged on bail, the present bail application deserves to be allowed. Hence, the application is allowed in the following terms:

(a) The applicant is directed to be released on bail on furnishing a P. R. Bond of Rs.50,000 with one or 2 sureties in the like amount to the satisfaction of the trial Court

(b) The applicant shall furnish his permanent address and mobile number to the Court.

(c) The applicant shall not leave India without permission of the Court and he shall furnish the information about his passport by placing copy of the same on record.

(d) The applicant shall attend the hearing of the case on the dates given by the Trial Court.

(e) The applicant shall not influence, induce, threaten or coerce the witness.

(f) The applicant's failure to abide by these conditions will entitle the prosecution to apply for cancellation of bail.

12. It is clarified the trial Court shall proceed further in the matter without being influenced by the observations in the present order.

MANISH PITALE, J.

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by MARIA AURA
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