

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

CRIMINAL BAIL APPLICATION NO. 44 OF 2021

Amol Tatyaso Pasoba

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr. Prashant Patil, Advocate for the Applicant.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

Sr.PI. Sanjay Nikumbe (I.O), Kherwadi Police Station.

PSI-Patil, DCB, CID, Unit-II.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21st April, 2021.

PC :

1. The applicant is seeking his release on bail in connection with C.R.No.14 of 2014 registered with Wadala T. T. Police Station, Mumbai for the offence under Section 304-A of IPC and Section 134(A) (B) Motor Vehicles Act. The investigation was taken over by DCB, CID, Unit-II vide C.R. No. 30 of 2019 and offences were registered under Sections 302, 201, 120 (B) r/w 34 of the Indian Penal Code. The investigation is over and the charge-sheet is filed.

2. The incident had taken place in the midnight between 13th and 14th January of 2014. Initially C.R. No.14 of 2014 was registered at Wadala T.T. Police Station under Section 304 A of the Indian Penal Code and under Section 134 of the Motor Vehicle Act.

The deceased was one Akhlaq Ahmed Khan. He was crushed by a tanker. Initially, the police had filed "A" Summary on 05/11/2014. Thereafter, brother of the deceased made complaints to higher police officers and filed Writ Petition in this Court. The investigation was transferred to DCB, CID Unit No.II in March 2019. They registered C.R.No. 30 of 2019 and carried out investigation. Applicant (Accused No.1) Saijuddin Qureshi (Accused No. 2) and Wakil Shaikh (Accused No. 3) were arrested.

3. It is alleged that accused No. 3 had taken money to the tune of Rs.1,70,000/- from Kaunen Tayabali for helping him in getting his brother released on bail. During this transaction the deceased had mediated and therefore deceased Akhlaq was insisting that shall complete the work. However, the amount was allegedly misappropriated by accused No. 3. There was quarrel between the them. Accused No. 3 allegedly gave contract for killing the deceased to Saijuddin (Accused No.2). The applicant was driver of accused No. 2. The applicant crushed the deceased by driving tanker on him.

4. Learned counsel for the applicant submitted that the co-accused No. 2 and 3 who are allegedly the persons involved in conspiracy are granted bail by this Court. It is the case of the prosecution that the accused No. 3 was having dispute with deceased

He gave contract to accused No. 2 and at his instance applicant was engaged to execute the contract of killing. The applicant was allegedly working as driver with accused No. 2. The applicant was arrested before recording statements of witnesses. There is no eye witness to the incident. The applicant was arrested five years after the incident. The prosecution is relying upon the statement of witness whose name has been suppressed. The statement is recorded on 23rd March, 2019. The applicant had allegedly made extra-judicial-confession to him that co-accused Saijuddin Qureshi was given contract by co-accused No. 3 to kill one person. The responsibility of killing the victim under truck was assigned to the applicant in which he was promised a payment of Rs.40,000/-. The said statement was recorded two days after arrest of the applicant.

5. Learned APP submitted that there is evidence against applicant. He has made to one of the witness. The name of said witness has been disclosed in supplementary charge-sheet. Statement of Shabnam Khan shows that the applicant was working with accused No. 2 as a driver. Thus, there is sufficient evidence to show involvement of the applicant.

6. The applicant was arrested on 21st March, 2019. The FIR was registered on 14th January, 2014 against unknown person.

According to complainant he received call from Sion hospital on 14th January, 2014 at about 2.00 a.m. that his brother Iklat has met with an accident and he has been brought to Sion Hospital for treatment. The complainant visited hospital. His brother had died. Summary report was filed. Investigation was transferred to DCB, CID. Accused No. 2 Saijuddin was arrested on 26th March, 2019. The applicant was arrested after five years from date of incident. Shahid Khan in his statement dated 23rd March, 2019 has stated that deceased and accused No. 3 were known to each other. Brother of friend of this witness was arrested and he needed help. Akhlaq had informed about it to accused No. 3. Amount of Rs.1,50,000/- was given to accused No. 3 for helping in taking steps for grant of bail. Accused No. 3 misappropriated the amount. Akhlaq (deceased) was annoyed with accused No.3. On 13th January, 2014 all of them met at hotel sahil. Akhlaq scolded accused No. 3. After the meeting Akhlaq and accused No. 3 left together. Thereafter, the witness received call from police that Akhlaq has met with accident. Statement of Shabnam was recorded on 23rd March, 2019. She is wife of deceased. She referred to rivalry between deceased and accused No. 3. Statement of witness to whom extra-judicial-confession was made was recorded on 23rd March, 2019. His statement is recorded after 5 years from date of incident. He stated that applicant was working with accused No. 2

Saijuddin. In March 2019, applicant met him and disclosed that, in 2014 person named Wakil had given contract to Saijuddin Qureshi for killing one person for Rs. 4 Lakhs. Accused No. 2 had engaged applicant to kill the said person by crushing him under tanker. Accused No. 2 had agreed to pay him Rs. 40,000/-. He executed the work. He was paid Rs.10,000/-. The version of this witness is doubtful. It is difficult to believe that after five years, the accused has made confession to him about the incident of 2014. There was no reason for making such confession. Even otherwise it is weak evidence. There is no other evidence connecting applicant with crime. The alleged conspirators were released on bail. Statement of Gullistabany was recorded on 2nd April, 2019. She is the wife of accused No. 2. She stated that applicant was working as driver on the tanker of accused No. 2. Accused No. 3 was acquainted with accused No.2. In January 2014, applicant was demanding money with accused No. 2. All these statements were recorded belatedly.

7. While granting bail to accused No. 3 Wakil Shaikh, this Court has observed that, statements of Shabnam, Shahid and Parvez refer to money transaction. They speak about possible rivalry between accused No. 3 and deceased. Statement of Tahir Hussain refers to confession of accused No. 1 which refers to role of accused No. 3. The circumstance against him is motive. There is no other

substantive evidence. The statement is recorded after more than five years. The evidence is weak. The confession of co-accused will not stand on its own. It has very limited use. While granting bail to Saijuddin (Accused No.2) it is observed that he stands on better footing than accused No.3. Prima-facie there is no material to show that, there was any conspiracy between accused No.2 and accused No. 3 to kill deceased.

8. The accused No. 3 was attributed motive. He has allegedly given contract to accused No. 2. The applicant had allegedly executed contract at the instance of accused No. 2. Considering the evidence on record, the observations made while granting bail to co-accused, the applicant deserves to be released on bail.

9. Hence, I pass the following order.

ORDER

- (i) Bail Application No. 44 of 2021, is allowed;
- (ii) The applicant is directed to be released on bail in connection with CR. No. 30 of 2019, registered with DCB, CID, Unit – II on executing PR. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one

or more sureties in the like amount;

- (iii) The applicant is permitted to furnish provisional cash bail in the sum of Rs. 25,000/- for a period of four weeks;
- (iv) The applicant shall attend the concerned police station, once in two months on the first Saturday, between 10.00 a.m. and 11.00 p.m., till the conclusion of the trial;
- (v) 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;
- (vi) The Applicant shall not tamper with the evidence or attempt to influence/contact the complainant, witnesses or any person concerned with the case;
- (vii) 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;
- (viii) Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)