

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

CRIMINAL BAIL APPLICATION NO. 395 OF 2020

Mohammad Aslam Mohammad Nayzfulla
Ansari

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. I. S. Thakur a/w Mr. Arjun Singh Thakur i/b. Global Juris
Consults, Advocate for the Applicant.

Ms. M. R. Tidke, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th FEBRUARY, 2021

PER COURT:

1. The applicant is arrested on 23rd July, 2018. The First Information Report (for short “FIR”) is registered with Hill Line Police Station, Thane vide C.R. No. 178 of 2018 for offences under Sections 302, 364, 342 of Indian Penal Code (for short “IPC). The FIR was lodged by Ganesh Subhash Alhat.

2. The prosecution case is as follows :-5

3. The first informant works as labourer in a factory. His wife is working in factory of Chunna Ansari. The son of complainant Harsh aged about 11 years was studying in 4th Std. His school timings were 7.00 to 12.30 noon. After school hours Harsh used to visit his grand mother or sometimes he used to visit workplace of

complainant or his wife. On 16th July, 2018, Harsh and his brother Kartik visited the workplace of complainant. At about 6.30 p.m. Harsh went to the factory of his mother. The complainant's wife came to the factory of the complainant after finishing her work. The complainant inquired about Harsh. His wife told him that he had left her factory at about 8.00 p.m. to visit the workplace of complainant. Both of them tried to search him. He was not found. At about 10.55 p.m. the owner of factory where the wife of complainant works gave a call to complainant and told him to come near his house. The complainant reached the spot. His son Harsh was found lying in pool of blood in a room situated on the first floor. He noticed stab wound on his neck. Knife was found lying at the place of the incident. The premises was owned by Tirath Changlani and it was rented to Mohammad Zakir Ansari. About 10 to 12 persons were occupying the said premises. The injured was shifted to hospital. He was declared dead. The FIR was registered against unknown person. The applicant was arrested. Statement of witnesses were recorded. On completing investigation, charge-sheet is filed.

4. The applicant preferred application for bail before the Court of Sessions. The said application was rejected by order dated 23rd July, 2019.

5. Learned advocate for the applicant submitted that the

applicant has been falsely implicated in these offences. He is skilled labourer. He has no criminal antecedents. There is no eye witness to the incident. The case is based on circumstantial evidence. The applicant is in custody from 23rd July, 2018. There is no progress in the trial. There is no cogent evidence to connect the applicant with the offence. The FIR was lodged against unknown person. The applicant is implicated on suspicion. The applicant has no motive, intention to kill the deceased. It is alleged that the victim had seen applicant hugging his friend Aanchal @ Aakanksha and apprehending that the victim would disclose this to family of Aanchal, he was killed. This cannot be motive for killing the victim. The deceased had no connection with the relationship, if any, between the applicant and the girl Aakanksha. The mother of the victim has improvised her version in the statement under Section 164 of Cr.P.C. stating that the deceased had mentioned on 15th July, 2018 that he had seen the applicant with girl Aakanksha together and that the applicant tried to assault him, but he ran away from him. The statement is doubtful. It is improvised to frame the applicant. The said version was not reflected in the statement under Section 161 of Cr.P.C. The complainant and his wife in their previous statements has clearly stated that they are not aware as to who has killed their son. The prosecution is relying upon the evidence of last seen together. It

does not inspire confidence. The witness who saw the applicant and the victim together is the owner of factory, where the mother of victim works. The witness Chunna Abdulgani Ansari in his statement dated 17th July, 2018 has stated that around 7.15 p.m. he saw the victim leaving the factory and thereafter he saw the victim boy with the applicant. He further stated that when he returned to the factory he saw mother of the victim working and her husband was searching the victim boy. He inquired with the witness and he was told by him to check his house. He did not state that he saw the deceased with the applicant. Further statement of Chunna Abdulgani Ansari was recorded on 17th July, 2018. He stated that some of the people staying in the room had fled and he suspected that one of them may be killed the deceased boy. Hence, he suspected all of them and not the applicant because he saw them last together. The said testimony cannot be relied upon to implicate the applicant in the crime. Applicant had occupied the premises with others. They had their own keys to have access to the room. The applicant was knowing the victim boy just like others as his parents were working in the same vicinity. The prosecution case is based on C.C.T.V. footage from one of the factory in the area. The C.C.T.V. covers only part of area. The C.C.T.V. timing was 20 minutes behind. The deceased and the applicant were walking in the directions of Swami Sarvanand

Hospital. Thereafter, the applicant and other were rushing in and out around the vicinity along with other persons who reside in the same room with the applicant. In the C.C.T.V. footage it was recorded that at about 19:38:38 the victim Harsh and the applicant were going towards Swami Sarvanand Hospital. The applicant and Nazam were proceeding towards public toilet and thereafter, Nazam was seen proceeding towards Tanaji Nagar in suspicious manner. At about 9.00 p.m. the applicant, Nazam Ansari and Kalam Ansari were seen proceeding towards Swami Sarvanand Hospital hurriedly. The C.C.T.V. footage also records the events occurred in between. It cannot be said that the conduct of the applicant is suspicious. Prima facie, no case is made out against the applicant. The knife was found at the place of incident. There is no recovery of incriminating article from the applicant. There is no evidence in the form of texts, pictures, messages, C.D.R. etc. between the applicant and the girl, who was allegedly seen with the applicant. The C.C.T.V. footage does not show that the clothes of the applicants were blood stained and or that he has carrying any plastic bag containing his clothes. Statement of Mohammad Ansari recorded under Section 161 of Cr.P.C. refers to the fact that Nazam Ansari assaulted Kalam Ansari and Kalam Ansari was admitted in the hospital. The probability of the clothes stained with blood from the residents cannot be ruled as they were all

residing together. There is no Chemical Analysis (C.A.) report. The blood stained clothes recovered at the instance of the applicant does not prove anything apart from suspicion. The applicant has been in jail for a long period of time. There is no progress in the trial.

6. Learned APP submitted that there is sufficient evidence against the applicant. The submissions of learned counsel for the applicant cannot be accepted at this stage. Although there is no eye witness to the incident, there are strong circumstances showing involvement of the applicant. There is recovery of blood stained clothes from the applicant. There are statements of witnesses stating that the victim was in the company of the applicant. There is strong circumstance of last seen together. The C.C.T.V. footage also shows that the applicant and the victim were together. Victim was a young boy aged about 11 years. The movements of the applicant on the day of incident were suspicious. The statement of the girl with whom the applicant was acquainted supports the motive attributed to the applicant.

7. The victim boy is aged about 11 years. The parents of the victim boy were working in the factory situated in the same vicinity. Most of the time the victim boy and his brother used to visit the factory of their parents after the school hours or on a holiday. On the day of incident the victim boy was in the factory of his father. In

the evening he visited factory of his mother. Since the boy used to visit his parents regularly the people from the area were knowing them.

8. The applicant was arrested on 23rd July, 2018. The arrest panchanama refers to injuries on the person of the applicant. There were abrasions on the finger, wrist, right hand, shoulder and knee of the applicant. Apart from the arrest panchanama, the medical case papers issued by the hospital after the examination of the applicant refers to the aforesaid injuries. On 27th July, 2018 memorandum statement of the applicant was recorded and blood stained clothes were recovered from the applicant. Statement of Chunna Abdul Gani Ansari was recorded on 17th July, 2018. He is the owner of garment factory. On 16th July, 2018, at about 1.30 p.m. the applicant visited his factory. He was talking to someone on his cell phone at about 5.15 p.m. He saw victim Harsh, who is the son of his worker Pratibha Alhat was sleeping in the factory premises. Victim went out the factory at about 7.15 p.m. The witness was proceeding to the shop and at that time he saw the victim boy in the company of applicant. Later on he noticed that father of victim boy was in search of the boy. He inquired with the witness whether the boy has visited his house and he told him that he was not at his house. At about 9.15 p.m. father of victim boy again visited his factory and inquired about

Harsh. At about 9.30 p.m. one of the worker of the witness told him that Aslam had informed him that someone has killed one boy in the room premises. He told him to run away. Thereafter, the witness visited the place of incident. Several persons had gathered. Harsh was found in pool of blood. Statement of Mohammad Jamil Abdul Gani Ansari was recorded on 17th July, 2018. He has stated that on 16th July, 2018 Aslam Ansari was sitting in his factory. At about 4.00 p.m. he was not in the factory. At about 7.45 p.m. he saw Harsh and Aslam going together. At about 9.00 p.m. Aslam Ansari rushed to the factory. His shirt was found wet. He was asked as to why he has under tension. He did not say anything. He left out along with Zakir Ansari. At about 9.30 p.m. he noticed that people were gathered. Aslam and his brother and other room partners were not there. His supplementary statement was recorded on 21st July, 2018. He has shown in C.C.T.V. footage. Aslam Ansari was seen making some action to Harsh (victim). Aslam and Harsh were seen leaving together. Supplementary statement of Mohammad Zakir Ansari was recorded on 20th July, 2018. He has stated that the knife shown to him was brought by Sahim @ Sami Ansari. He also stated that the lock shown to him was used for closing the room premises and key of that premises were with Aslam Ansari. Supplementary statement of Gulab Moulana Shaikh was recorded on 21st July, 2018. He was

shown in C.C.T.V. footage. He stated that the recording in the C.C.T.V. footage shows that Aslam is making some signs and calling Harsh and both of them were seen leaving together. His statement was also recorded under Section 164 of Cr.P.C. Statement of Anchal Kesharwani was recorded. She has stated that on 15th July, 2018, the applicant called her. He hugged her. This was seen by the victim boy. She told him that the boy might disclose this to her parents. Aslam told her not to worry about it and he would do something about it. Statement of mother of Anchal was recorded. She has stated that inquiry was made with Anchal earlier but she had not disclosed the version reflected in her statement and for the first time she has disclosed it. The discrepancies pointed out by learned counsel for the applicant will have to be established in evidence. Prima facie there are strong circumstances showing involvement of the applicant in the offence. Considering these circumstances, no case for grant of bail is made out.

ORDER

- (i) Criminal Bail Application No. 395 of 2020 is rejected and stands disposed off accordingly;
- (ii) Trial is expedited.

(PRAKASH D. NAIK, J.)