

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1193 OF 2020

Mohammed Nasim Akhil Shaikh .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. S.V. Marwadi with Mr. N. M. Nadar i/b Mr. S.G. Rajput for
the Applicant.

Mr. A.R. Kapadnis, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 27TH SEPTEMBER, 2021.

P.C:-

1. Investigating machinery was set rolling when information was received about a dead body being found at Khaniwade creek, Virar, on 09/08/2019 and ADR No.483 of 2019 came to be registered. Prior to registration of the said ADR, a missing complaint was lodged on 08/08/2019 at Malwani Police Station vide Complaint No.217 of 2019. The dead-body, which was found, was identified as that of one Krishnendu Chandan Chowdhury and the investigation proceeded against unknown persons. The Applicant came to be arrested by Virar Police on

AJN

14/08/2019 and faced accusations under Sections 302 and 201 read with Section 34 of the IPC. On completion of investigation, the charge-sheet is filed against three accused persons, the Applicant being charge-sheeted as Accused No.3.

2. The investigation which led to the dead body, reveals that the body was sent for postmortem and the Advance Death Certificate issued on 10/08/2019 ascertain the cause of death as death due to respiratory failure and hypovolemic shock due to cut throat injury. The detailed postmortem report reflects a brutal assault on the deceased with 11 injuries being recorded in Column No.17, largely being stab and cut injuries. The age of the injuries is opined to be within 36 hours to seven days of examination. The weapon has been identified as sharp and cutting edged weapon whereas, three injuries are opined to be caused by a hard and blunt object. The diagramic presentation in the postmortem reveals the brutality of the attack, which caused the cut throat injury resulting into the death of the deceased.

3. During the investigation, several statements came to be recorded, which included the statement of one Chinmay Mandal, a roommate of the deceased, who was also working with the deceased in the same office as designer. On 07/08/2019, it is reported by Chinmay Mandal that the deceased was working in the office the whole day, but at 6.45 p.m., he left the office on his

motorbike after informing that he had to attend a meeting in connection with designs with Mohammad Furkan Shaikh at Malwani. At 7.30 p.m., he received a phone call from the deceased asking him to forward some changes in the designs and, accordingly, he forwarded the designs on the e-mail of the deceased. But, thereafter, there was no contact between the two. On 08/08/2019, he checked for his bike, but it was not to be found and when he went to the office, he informed his colleague Pooja about the same. When he was unsuccessful in establishing contact on phone, he lodged a missing complaint at Malwani Police Station. Statement of one Pritam Wadekar, who was working as designer in the office of the deceased, is also on record and he also states to the effect that the deceased had left for a meeting with Accused No.1 at Madh Malwani, but was not seen thereafter. Statements of one Khushboo Malvia and Abhijit Thakur, employees working with the deceased are compiled in the charge-sheet. In the charge-sheet, the statement of one Yavar Husain is compiled, who is associated with Accused No.1 and he has stated that on 07/08/2019, the deceased had visited Accused No.1 and he had arranged water for him. He saw the deceased and Accused No.1 chatting and also mentioned about the presence of Accused Nos.2 and 3 on the platform of the godown. As per Yavar Husain, he was asked to leave the place on the pretext of making payment to some party and he narrates the details of the instructions received by him from Accused No.1. When ultimately, he realised that no payment was to be made,

but in order to keep him away from the place, he was sent out of the office. On the next day, when he returned to work, Accused No.1 asked him to take care of the electric line at the hands of wire-man as he was informed that in the night the sofa had caught fire and it was kept in the godown. The said witness has described about the details of the room when he opened the room with the keys and he also states that he was directed to bring white plastic paint by Accused No.1, which was put on the walls, over some black spots. According to the said witness, Accused No.1 instructed him that if any details of Accused Nos.2 and 3 are asked by the police, he should tell the police that they do not stay in the godown and, if his whereabouts are asked, he should respond that he was with his sister in Sion on the earlier night. On the police arriving at the spot, the said witness responded as per the directions of Accused No.1.

4. When the panchnama under Section 27 of the Code is perused, it refers to the partly burned sofa set with blood like stains on it. Accused No.1 led to the discovery of the knife and the place where the body of the deceased was disposed of. There is also a recovery of car of the deceased at the instance of Accused No.1.

As far as the present Applicant is concerned, the investigation reveals that the wife of the Applicant walked into the police station with a laptop of the deceased and her statement compiled in the charge-sheet reveals that at the instance of the

Applicant, she had made over the laptop to the police, which was handed over to her by her husband, when he had visited their village in U.P. on 09/08/2019.

5. The material compiled in the charge-sheet is based on circumstantial evidence. The postmortem report has opined about the approximate time when the death of the deceased had occurred. From the investigation, it has surfaced that Accused Nos.2 and 3 used to reside in the godown and were present along with Accused No.1, when the deceased had visited the place on account of some meeting in relation to the designs. The testimony of Yavar Husain is of great significance and reveals that the accused persons were present in the company of the deceased when he left the place at the instructions of Accused No.1. The material compiled in the charge-sheet implicate the present Applicant and the crime committed being a heinous one, where a young man had been done to death by the three accused persons, though the case is based on circumstantial evidence, it cannot be said that the prosecution is not successful in compiling the material against them and the prosecution deserves an opportunity to prove the accusations. The offence being grave and serious, the Applicant does not deserve his release and the Application is rejected.

[SMT. BHARATI DANGRE, J.]