

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

CRIMINAL BAIL APPLICATION NO.1459 OF 2020

Ashfaq Shaikh

.... Applicant

versus

State of Maharashtra

.... Respondent

.....

- Smt.Sonal Parab i/b. Rajeev M. Sawant, Advocate for Applicant.
- Ms.Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st MARCH, 2021

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.885/2020 dated 11/07/2020 registered with Kondhva Police Station, Pune, under section 302 of the Indian Penal Code. The Applicant was arrested on 20/07/2020 and since then he is in custody. The investigation is over and the charge-sheet is filed.

2. The prosecution story is that one Latif Abu Shaikh

accused No.1 had taken Rs.50,00,000/- way of loan from one Ghanshyam Padwal, who is the deceased in this case. The deceased was constantly after the accused No.1 for repayment of that money. But he was not in a position to return that amount. Therefore he took present Applicant in confidence and expressed his intention to commit murder of the deceased. It is the prosecution case that the Applicant introduced him to the main assailants Shubham Pramod Kasvekar and Shubham Santosh Ubale. They were paid Rs.2 lakhs by the present Applicant. There was one more accused Mohd. Rafiq Ali Pathani. All of them conspired together. On 09/07/2020, at about 09.00 p.m., the assailants Shubham Kasvekar and Shubham Ubale entered the house of the deceased and committed his murder by using sharp weapons.

3. Heard Smt.Sonal Parab, learned counsel for the Applicant and Ms.Pallavi N. Dabholkar, learned APP for the State.

4. Learned counsel for the Applicant submitted that there is absolutely no material against the present Applicant. The prosecution is relying on the statements given by the co-accused u/s 27 of the Evidence Act to implicate the Applicant. Even in those statements the Applicant's name is mentioned in portions which are inadmissible and therefore there is no admissible piece of evidence against the Applicant.
5. Learned APP submitted that there are certain circumstances which if taken together; complete the chain of circumstances against the present Applicant and therefore she opposed this application.
6. I have considered these submissions. With assistance of both the learned counsel I have perused the charge-sheet.
7. The post-mortem papers show that the cause of death was "Traumatic and hemorrhagic shock due to multiple chop injuries." As per the prosecution case the actual assailants were Kasvekar and Ubale. It is not the prosecution case that the

Applicant had taken part in the assault or that he was present in the house of the deceased when he was assaulted. He himself did not have any motive to commit the murder. It was the accused No.1 Latif who had taken money from the deceased, but did not want to return the amount and therefore he had hatched the conspiracy to commit the murder. The allegations against the present Applicant are that he introduced both these assailants to the main accused Latif. However, there is no material to support this contention.

8. There is a statement of one Abid to show that the accused No.1 Latif had taken loan from the deceased. This circumstance operates against the accused No.1 Latif and not against the present Applicant.

9. Learned APP relied on the statement of one Kadir Sayyed who had stated that after March 2020 he had seen the present Applicant with all other accused including the assailants coming to his hotel to have tea. On 08/07/2020 the Applicant had come to his hotel with co-accused Mohd.Rafiq. This

statement only speaks about these visits but even these visits do not indicate that any conspiracy was hatched by all these accused. This only shows that on some occasions, some accused had visited his hotel.

10. Learned APP then relied on the statement of one Anil Vilas Shinde who was a watchman at the place, where the Applicant No.1 was a supervisor. He has stated that on 09/07/2020, the other accused Kasvekar and Ubale had come to that place. At that time, those two accused had a talk with Rafiq and the present Applicant. It is mentioned that, at 2 o'clock, he had seen some smoke and at 12.00 a.m. they had left that place. Shubham Kasvekar, present Applicant and Rafiq had slept in the office. All of them had left the place at different times in the morning. Learned APP relied on this statement to contend that after the incident, the assailants had met the present Applicant. But this is a weak piece of evidence and this circumstance by itself does not form a complete chain of circumstances against the present Applicant.

11. The prosecution case apparently revolves around the statements of the two co-accused, u/s 27 of the Evidence Act. The first one was given by the assailant Shubham Kasvekar. In that statement he had volunteered to show the place from where the weapon was recovered at his instance. The statement gives details and mentions the manner in which the conspiracy was hatched. However, that portion would be inadmissible u/s 27 of the Evidence Act. Such portion has not led to recovery of any incriminating material. Same is the case regarding the statement given by co-accused Latif. At the end of this statement he had shown willingness to show the places where he had thrown his Chappal and clothes and where he had parked his two wheeler. Even in this statement, the name of the Applicant is mentioned the inadmissible portion. In this view of the matter there is hardly any admissible incriminating piece of evidence against the present Applicant. Therefore the Applicant deserves to be released on bail.

12. Hence, the following order :

ORDER

- (i) In connection with C.R.No.885/2020 dated 11/07/2020 registered with Kondhva Police Station, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)