

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

CRIMINAL BAIL APPLICATION NO. 2070 OF 2019

Imtiyaz Mushtaq Shaikh

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Vikas B. Shivarkar for the Applicant

Ms. S. V. Sonawane, A.P.P for the Respondent–State

PSI Mr. Vikas Shinde from Khadki Police Station, Pune City, is present

CORAM : REVATI MOHITE DERE, J.

TUESDAY, 23rd FEBRUARY 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 187 of 2018 registered with the Khadki Police Station, Pune, for the alleged offences punishable under Sections 302, 201, 212 r/w 34 of the Indian Penal Code.

3 Perused the papers. On 31st May 2018, the police found a dead body lying along large cement pipes near Holkar bridge. The body was in

a decomposed stage. A large blood-stained stone was also found lying on the spot. Thereafter, the body was sent for post-mortem examination. The doctor who performed the post-mortem, opined the cause of death as “head injury with signs of decomposition, however, viscera and other articles were preserved for chemical analysis.” Pursuant to the same, PSI Shivaji Bhosale lodged an FIR with the Khadaki Police Station on 1st June 2018 as against the unknown persons. During the course of investigation, the applicant was arrested on 4th July 2018. Admittedly, the prosecution case rests on circumstantial evidence.

4 According to the learned counsel for the applicant, there are no circumstances on record to connect the applicant with the alleged offence. He submits that for the first time i.e. on 7th August 2018, the applicant’s mother has disclosed that the applicant was last seen with two unknown persons near a bus-stop. He submits that pursuant thereto, the mother has identified the applicant as being one of the persons in the test identification parade, which was conducted belatedly i.e. on 21st September 2018.

5 Learned A.P.P submits that the only material against the applicant is that of last seen with the applicant. As far as recovery is concerned, nothing was recovered at the instance of the applicant.

6 It appears that the applicant was arrested on 4th July 2018 and after more than a month i.e. on 7th August 2018, the statement of Jayshree Jadhav (mother of deceased-Omkar) was recorded, in which, for the first time, she has stated that she had seen two unknown persons along with her son-Omkar at a bus-stop. According to the said witness-Jayshree, she had seen them at around 6:30 p.m. The statement of Izhaar Choudhary recorded on 14th August 2018 shows that the deceased-Omkar was in the company of one Bilal Attar (original accused No. 1) on 29th May 2018. It is stated that both Omkar and Bilal demanded Rs. 200/- from him for drinking alcohol and had even threatened to assault him in the event he did not give them money. In Izhaar's statement, there is no reference of a third person, present with Omkar and Bilal. The statements of both these witnesses are recorded belatedly in August 2018, after a month of applicant's arrest. The evidentiary value of the said statements as well as the identification of the applicant in September 2018 in the test identification parade, will be tested at the time of the trial. This being the only material *qua* the applicant, learned counsel for the applicant has made out a case for grant of bail.

7 Considering the aforesaid, the applicant deserves to be enlarged on bail on the following terms and conditions :

ORDER

- (i) The applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 30,000/- with one or two local sureties in the like amount;
- (ii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iii) The applicant shall attend the concerned Police Station on the first Saturday of every month between 10:00 a.m. to 11:00 a.m, till the conclusion of the trial;
- (iv) 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 Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

8 The application is allowed in the aforesaid terms and is accordingly disposed of.

9 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.