

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 3244 / 2019

Irfan @ Rafiuddin Zainullah

Khan

.....Applicant

V/s.

The State of Maharashtra

....Respondent

* * * *

Mr. Nitin Sejpal a/w. Ms. Akshata Desai, advocate for
the applicant.

Mrs. Sharmila Kaushik, APP for Stte.

Head Constable, R.M. Jadhav, Mumbra Police Station,
Thane present.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 23rd February, 2021.

P.C. :

1. Heard learned Counsel for the applicant and
learned APP for State.

2. Applicant seeks his enlargement on bail in connection with Crime No.I-401/2019 dated 2nd June, 2019 registered with Mumbra Police Station under Section 302 of the Indian Penal Code.

3. It is a case, wherein the State has failed to conduct a 'fair' investigation, in as much as, on 17th February, 2015, husband of the deceased had reported to police that the applicant, a paying-guest, had caused the death of his wife, Neeludevi, by strangulating her, when nobody was in the house. The post-mortem report shows, probable cause of death was compression of neck on left side. The spot panchanama drawn on 2nd February, 2015 also shows that, a wire was found at the place of incident. Despite information relating to cognizable offence was given, instead of registering FIR, accidental death enquiry was held under Section 174 of the Criminal Procedure Code vide A.D.R. No.18/2015. In the course of an enquiry, PSI, P.B. Chavan had recorded statements of nine witnesses whereafter he was transferred, somewhere around in June, 2015. His successors, P.M. Wankhede and PSI, Kore to whom the enquiry was made over, did nothing and chose to remain passive, though the enquiry was suggesting and

suspecting complicity of the applicant. In March 2019, Senior Inspector, Mr. Kad in the periodical review meeting realised that, the accidental death enquiry had revealed that the applicant strangled the deceased who had illicit relations with her. In the circumstances, on 2nd June, 2019 Assistant Police Inspector filed a complaint which was registered vide C.R. No.401/2019 under Section 302 of the Indian Penal Code against the applicant.

4. In the course of investigation, the statement of minor son, of the deceased was recorded. I have perused it.

5. Relying on the statement of the minor son, it is submitted by the prosecution that, deceased was last seen in the company of the applicant, who eventually was a paying-guest. Besides, prosecutor has also pointed out the statement of neighbour recorded on 5th February, 2015 to submit that, his statement suggest, illicit relations between the deceased and the applicant. It is submitted that the applicant was absconding since June, 2015 till 2nd June, 2019. Prosecution would therefore submit that, the offence being punishable with

life or death and he being not ordinarily residing in the State of Maharashtra, he may not be granted bail.

6. I have perused the final report.

7. Admittedly, subject offence has been registered against the applicant nearly after four years. This delay is simply and exclusively attributable to voluntary omission in reckless disregard of legal duty by police officers of the State.

8. Other than the statement of the husband, who suspects, applicants' complicity in the crime may be on account of his illicit relations with the deceased, there is no other acceptable evidence on record, prima-facie to show the applicants' complicity. So far as the statement of minor son is concerned, it may be stated that, his statement was not recorded in the A.D. enquiry and therefore at this stage, his statement which has been recorded nearly, after four years of the incident, is to be kept out of consideration for the time being and atleast in these proceedings.

9. The applicant is in custody since June, 2019. The investigation is over. His presence for the trial can be secured by imposing the conditions.

10. Before parting with this order, let the Commissioner of Police, Thane take a note that the Officers who were entrusted with the A.D. Enquiry and Officer who had recorded the statement of the husband of the deceased have utterly shown their disregard to provisions under Chapter-XII of the Code of Criminal Procedure, which caused serious prejudice to rights of the victim of “fair investigation”.

11. Registry and also Public Prosecutor, High Court shall forward copy of this order to the Commissioner of Police, Thane who shall hold appropriate enquiry against the erring Officers, in accordance with law, and conclude the same, preferably within 60 days. The Commissioner of Police is also requested to forward a report to this Court in sealed envelope.

12. List the application on 30th April, 2021 under the caption ‘compliance’.

13. Hence, the following order :

O R D E R

(i) The applicant arrested in Crime No. I-401/2019 registered with Mumbra Police Station, shall be released on bail on executing P.R. bond for the sum of Rs.30,000/- (Rs. Thirty Thousand only) with a local surety in the like sum.

(ii) The applicant shall report to the Investigating Officer once in a month i.e. second Monday of each month between 11:00 to 1:00 p.m. till the charge is framed and co-operate in the investigation.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the

complainant, witnesses or any person concerned
with the case.

**Neeta S.
Sawant**

Digitally signed by
Neeta S. Sawant
Date: 2021.02.24
10:59:11 +0530

(SANDEEP K. SHINDE, J.)