

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3392 OF 2019**

Firasat Ali Allarakha Shah
Versus
State of Maharashtra

...Applicant

...Respondent

Ms. Misbaan Solkar for the Applicant

Mr. A.R. Patil, A.P.P for the Respondent-State

PSI N.G.Shinde, J.J.Marg Police Station.

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 22nd JANUARY 2021

P.C. :

1 Heard learned counsel for the applicant and the learned A.P.P
for the State.

2 By this application, the applicant seeks his enlargement on bail
in connection with C.R. No. 126 of 2006 registered with the J.J.Marg
Police Station, for the alleged offences punishable under Sections 302, 201
r/w 34 of the Indian Penal Code.

3 Learned Counsel for the applicant submits that the prosecution
case rests on circumstantial evidence and that there is no material to

connect the applicant with the alleged offence. She submits that the applicant is better placed than co-accused Irshad - Ali Allarakha Shah, who was released on bail by this Court (Coram : A.S.Gadkari, J) vide order dated 28/06/2018. She further submits that the extra judicial confession were allegedly made by Irshad Shah (co-accused) to one Rizwan Yusuf Shaikh, 9 years prior to recording of Rizwan's statement.

4 Learned APP opposed the application.

5. Perused the papers. According to the prosecution, on 14/05/2006, a torso wrapped in a plastic bag was found near Mastan Talao, Bhendi Bazar, Mumbai. The head and limbs of the said corpse could not be traced as the accused persons had caused disappearance of the same. Sometime in January, 2018, after about 8 years, the Police received secret information that the person whose torso was found, was of one Kisan Kharva and that he was murdered. During the course of investigation, the Police arrested Smt. Bansiben Kharva (wife of the deceased), the applicant and Irshad Ali Allarakha Shah. According to the prosecution, deceased – Kisan Kharva was addicted to liquor and would abuse and assault his wife, i.e. accused No.1 – Smt. Bansiben Kharva. It is also alleged that the deceased used to doubt his wife's chastity. It is alleged that pursuant

thereto, the accused No.1 - Bansiben Kharva gave a contract to kill her husband - Kisan Kharva to the applicant, pursuant to which, the applicant murdered Kisan Kharva and that the applicant with a view to screen the offence, cut the body parts of the deceased and threw it in different places. The prosecution case admittedly rests on circumstantial evidence. The circumstance alleged as against the applicant is an extra judicial confession allegedly made by the co-accused – Irshad Ali Allarakha Shah (original accused No.3) to one, Rizwan Yusuf Shaikh. It is pertinent to note that Rizwan Shaikh's statement was recorded on 17/01/2018 after the arrest of co-accused Irshad.

6 According to the prosecution, Irshad Ali Allarakha Shah (original accused No.3) had made an extra judicial confession to the said witness, 9 years prior to the date of recording of his statement and had revealed about the Kisan Kharva's murder. It is pertinent to note that the said witness i.e. Rizwan Shaikh, to whom the alleged extra judicial confession was made 9 years prior, had not disclosed the same, either to the Police or any other person. Apart from the extra judicial confession made by the co-accused to Rizwan Shaikh, there is no other material I.e. of last seen, recovery etc. as against the applicant to connect him to the offence. Co-accused - Irshad Ali Allarakha Shah made the alleged extra judicial

confession, has been enlarged on bail by this Court (Coram : A.S.Gadkari, J) vide order dated 28/06/2018.

7 Considering the aforesaid, the application is allowed and the applicant is 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. 25,000/- with one or two sureties in the like amount;

(ii) The applicant shall attend the concerned Police Station on the first Sunday of every month between 10:00 a.m. to 12:00 noon for a period of 12 months from the date of his release;

(iii) 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;

(iv) The applicant to cooperate with the conduct of the trial and attend the trial Court on all dates, unless exempted;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall file an undertaking with regard to clauses (ii) to (iv) 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.