

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1125 OF 2022**

Pappu @ Mohammad Kutub Qureshi ... Applicant
versus
The State of Maharashtra ... Respondent

Ms. Sonali R. Chavan i/by Dr. Uday P. Warunjikar, for Applicant.
Mrs. M.R.Tidke, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 5th JULY, 2022

P.C.

1. This is an application for bail. The Applicant – Accused No.2 along with co-accused Haider Noor Shaikh (Accused No.1), Shoaib Saied Shaikh (Accused No.3) and Mirza @ Jakir Noor Shaikh (Accused No.4) have been arraigned in C.R.No.69 of 2016 registered with Vishrantwadi Police Station, Pune, for the offences punishable under Sections 120B, 363, 364,365, 302, 201 read with Section 34 of the Indian Penal Code, 1860.

2. The gravamen of indictment against the Applicant and co-accused is that the wife of Haider (Accused No.1) allegedly had extra marital relations with Prashant Gumanekar (deceased), the younger brother of Sikandar Ashok Gumanekar, the first informant. The relations between Haidar (Accused No.1) and the deceased were strained over the said issue of alleged extra marital relations. A month prior to the occurrence, there was an altercation. A meeting was held to resolve the disputes, in

which the first informant and his relatives and Haider (Accused No.1) and his relatives participated and made efforts to resolve the dispute. Since then Haider (Accused No.1) and his relatives had a grudge against the deceased.

3. On 1st April, 2016 the deceased left the home at about 11.30 a.m. and did not return. While the first informant and his relatives were searching the deceased, they were informed by Jitendra that on 1st April, 2016 at about 12.00 noon, 3-4 persons forcibly made the deceased to board a vehicle, and took him away. As the description of those persons matched with the accused, the first informant lodged report of abduction with intent to kill the deceased. The accused were apprehended. Pursuant to the disclosure statement made by Haider (Accused No.1), body of the deceased was dis-entered from the house of the Applicant situated at Kesnand, Pune.

4. This application is preferred principally on the ground of parity. It is averred that the co-accused Mirza @ Jakir Noor Shaikh (Accused No.4) was released on bail by this Court by an order dated 7th August, 2017 (in Bail Application No.897 of 2017). Whereas, the co-accused Shoaib Saied Shaikh (Accused No.3) was released on bail by the learned Additional Sessions Judge by an order dated 30th December, 2017. Moreover, the co-accused Haider (Accused No.1), who allegedly had a grudge against the deceased suspecting extra marital relations with his wife, has also been released by this Court by an order dated 28th January, 2022 (in Bail Application No.2716 of 2022). Thus all the co-accused have been enlarged on bail and the only Applicant continues

to languish in jail since more than six years. Hence, this Application.

5. I have heard Ms. Sonali Chavan, learned Counsel for the Applicant and Mrs. Tidke, learned APP for the State at some length. With the assistance of the learned Counsel for the Applicant and the learned APP, I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. I have also perused the orders passed by this Court releasing the co-accused on bail.

6. The learned Counsel for the Applicant would submit that the co-accused Shoaib Shaikh (Accused No.3) and Mirza Noor Shaikh (Accused No.4), against whom identical allegations like the Applicant have been made, are released on bail. The Applicant is similarly circumstanced. The role attributed to Haider (Accused No.1) who, in a sense, is the principal accused, is relatively grave. Yet Haider (Accused No.1) has been released on bail opining inter alia that the entire case rests on circumstantial evidence and, prima facie, the involvement of the said accused is not made out. Therefore, the Applicant deserves the same dispensation.

7. Learned APP fairly submitted that the role attributed to the Applicant is identical to that of the co-accused who have been ordered to be released on bail. In this backdrop, the claim for parity appears sustainable, submitted the learned APP in fairness.

8. Nonetheless, I have perused the material on record to satisfy the judicial

conscious. Indisputably, the entire case rests on circumstantial evidence. The first circumstance arrayed against the Applicant is that on 1st April, 2016 at about 12.00 noon, Akshay Rampure had seen the deceased being forcibly taken away in a car by 2-3 persons. As regards the said circumstance, this Court in its order dated 7th August, 2017 (in Bail Application No.897 of 2017) recorded that Akshay had not known those persons from before and no test identification parade was conducted.

9. Another witness Ankush Mhaske claimed to have seen the deceased in conversation with Haider (Accused No.1) and the Applicant on 1st April, 2016 at about 12.00 noon. While enlarging Haider (Accused No.1) on bail, this Court adverted to the statement of the said witness recorded on 2nd April, 2016 and the improvement purported to have been made by the said witness in the statement recorded on 4th April, 2016.

10. Apart from the aforesaid statements, the prosecution has banked upon two discoveries, first, made by Haider (Accused No.1) on 2nd April, 2016 leading to the recovery of the body of the deceased from the premises of the Applicant where the construction was underway. Haider (Accused No.1) had also made a discovery leading to the recovery of the car in which the deceased was allegedly abducted. Second, the discovery made by the Applicant to show the place where the clothes on the person of Applicant and the deceased and the rope by means of which the deceased was allegedly strangled, were burnt. Pursuant to the said discovery,

ashes and remains of burnt articles were allegedly seized.

11. The prosecution case, thus, hinges upon the theory of last seen and the evidence of discovery under Section 27 of the Indian Evidence Act. It is pertinent to note that the co-accused against whom identical incriminating circumstances are arrayed, have been released on bail. The allegations against the Applicant stand on the same footing, if not lessor to that of the co-accused Haider (Accused No.1). This Court by ascribing reasons was persuaded to exercise discretion in favour of Haider (Accused No.1). I do not find any justifiable reason to deprive the Applicant of the dispensation which is extended to the co-accused.

12. The Applicant has been in custody for more than six years. Since the co-accused are released on bail, it is unlikely that the trial can be completed in immediate future. Further detention of the Applicant, in the circumstances of the case, does not seem warranted. Thus, I am inclined to exercise the discretion in favour of the Applicant. Hence, the following order :

ORDER

- (i) The Application stands allowed.
- (ii) The Applicant – Pappu @ Mohammed Kutub Qureshi be released on bail in C.R.No.69 of 2016 registered with Vishrantwadi Police Station, Pune, on furnishing a PR bond in the sum of Rs.25,000/- and one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge, Pune.

(iii) The Applicant shall mark his presence at Vishrantwadi Police Station on the first day of October, January, April, and July in between 10.00 a.m. to 11.00 a.m., till the conclusion of the trail.

(iv) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(v) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) By way abundant caution, it is clarified that the observations hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the learned Sessions Judge shall decide the case on its own merits, in accordance with law, uninfluenced by any of the observations made in this order.

(N.J.JAMADAR, J.)