

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1452 OF 2022

Salim Aarif Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Moin Khan for the Applicant.

Ms.Rutuja Ambekar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 09th NOVEMBER, 2022

P.C:-

1. The applicant faces charge under Sections 302, 397 read with Section 34 of IPC and Sections 37(1)(A) and 135 of the Maharashtra Police Act. The charge-sheet is filed in C.R.No.80 of 2021 registered with Powai Police Station and the applicant, who is arraigned as accused No.1, came to be arrested on 27/02/2021 alongwith another co-accused Noor Yunus Khan.

2. Heard the learned counsel for the applicant and the learned A.P.P.. Perused the charge-sheet placed on record.

The case of the prosecution is based on circumstantial evidence. The prosecution alleged that on 23/02/2021, one

dead body was found near the Bandhara of Powai Vihar Lake, Near Peru Baug, Chandshahawali Dargah, Powai and the body was identified to be of one Rajesh Bhardwaj, aged 40 years. After conducting the inquest panchnama, the body was forwarded for postmortem and the postmortem report attributed the cause of death as, "Cut Throat with Stab to Abdomen". The postmortem report, in column No.17, refers to nine injuries, largely in form of incised wounds and stab wounds. The applicant came to be arrested and in order to connect him with the said crime, the prosecution would place reliance upon a discovery panchnama recorded under Section 27 of the Evidence Act, where there is a recovery of mobile phone at the instance of the applicant from his brother's house.

Learned counsel for the applicant would vehemently submit that the silver coloured mobile phone of Samsung company, which has been recovered at the end of the discovery panchnama, in fact does not belong to the deceased. The case of the prosecution is, this mobile phone was belonging to one Gulam Shah, who had engaged the services of the present applicant for vending fruits and vegetables and in order to have updates, he has handed over his old mobile phone of Samsung make to him. This is the only link, which the prosecution establishes in the whole charge-sheet. From accused No.2, there is a recovery of knife from a completely distinct place, but there is no iota of evidence in the entire charge-sheet, showing that these two accused persons had any connect with the deceased or they were last seen together in the company of the deceased. The connection between the two

accused persons is also not established, barring their statement in the memorandum panchnama recorded under Section 27, which is admittedly not an admissible piece of evidence.

3. It is the duty of the prosecution to establish its case beyond reasonable doubt by clinching and reliable evidence, being collated in the charge-sheet and prove it during the course of trial. In the case of circumstantial evidence, it is necessary to establish the chain of circumstances, one linked to another in such a way that all the circumstances must pinpointedly point out only to the accused and none else other than the accused. Ring of circumstances is conspicuously absent in the present charge-sheet and what is attributed is only recovery of the mobile phone, which admittedly does not belong to the deceased. Even assuming that it was used by the deceased, it can be seen that his own father has given a statement that the mobile phone was not of his son. The benefit of doubt must go to the accused, if the prosecution fails to establish the chain of circumstances in a cogent and reliable manner. Needless to state that the prosecution will have to prove its case based on the material compiled in the charge-sheet, but at present, the material falls short of pointing out the guilt of the applicant merely on the solitary ground of recovery of mobile phone.

4. The observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the

offences with which he is charged, shall not get influenced by the above observations, in any manner.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Salim Aarif Khan shall be released on bail in connection with C.R.No.80 of 2021 registered with Powai Police Station on furnishing P.R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall mark his attendance before the concerned police station on first Saturday of every trimester between 3.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (d) The applicant shall attend the trial on regular basis.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)