

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

CRIMINAL APPEAL NO.419 OF 2021

Mohammad Faruq Isaq Kkhan ...Appellant

Versus

State of Maharashtra and Anr. ...Respondents

Mr. Abid Mulani a/w Mr. Yohaán Mehta, for the Appellant.

Ms. M. M. Deshmukh, A.P.P for the Respondent No.1- State.

Mr. A. A. Jadhavar, Appointed Advocate for the Respondent No.2.

***CORAM: REVATI MOHITE DERE &
V. G. BISHT, JJ.***

DATE : 23rd JUNE 2022

P.C. :

1. Heard learned counsel for the parties.
2. By this appeal, the appellant seeks his enlargement on bail in connection with C.R.No.131 of 2019 registered with the Bharati Vidyapeeth Police Station, Pune, for the alleged offences punishable under Sections 302, 364, 201, 120B, 34 of the Indian Penal Code; under Sections 37(1) r/w 135 of the Maharashtra Police Act and under

Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

3. Perused the papers. The prosecution case rests entirely on circumstantial evidence. It appears that on 30th January 2019, Vinayak Shirsat went missing, pursuant to which, a missing complaint was lodged with the Bharati Vidyapeeth Police Station, Pune, on 31st January 2019. It appears that on 5th February 2019 an FIR was lodged by the father of the deceased i.e. Sudhakar Shirsat, as against unknown persons, alleging an offence punishable under Section 364 of the Indian Penal Code. On 11th February 2019, the dead body of Vinayak Shirsat was found near Mulshi Dam at Pune. As far the appellant is concerned, there is no circumstance of last-seen or recovery of any weapon at his instance, much less the circumstance of motive. A perusal of the statement of Satish Nirmal with respect to last-seen was recorded on 27th April 2019, after about 3 months from the incident. According to the said witness, he saw his cousin Vinayak on 30th January 2019 with one Dharamprakash Verma. He has stated that

deceased – Vinayak got down from his pajero vehicle alongwith Dharamprakash Verma and went towards a Swift Dzire Car, which was standing there, in which there were 2 persons. The said 2 persons have not been named nor identified by the said witness i.e. Satish Nirmal, as no Test Identification Parade (TIP) was held. Even otherwise, the statement of this witness was recorded belatedly, after about 3 months.

4. Considering the aforesaid, the Appeal is allowed and the appellant is enlarged on bail, on the following terms and conditions:-

ORDER

- (i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- with one or two local sureties in the like amount;
- (ii) The appellant 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;

(iii) The Appellant 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 trial Court as well as to the concerned Police Station, in writing;

(iv) The Appellant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case and shall not commit similar offence;

(v) The Appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted by the trial Court;

(vi) An undertaking to the aforesaid clauses (ii) to (v), shall be filed by the Appellant, in the Registry of the trial Court, within one week of his release;

(vii) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

5. The Appeal is allowed and disposed of in above terms.

6. 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.

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

V. G. BISHT, J.

REVATI MOHITE DERE, J.