

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2546 OF 2021
WITH
CRIMINAL APPEAL NO. 1609 OF 2019

Ashfaq Issak Ali Sayyed
Age: 36 years, Occ. Electrician
R/at: Khadgaon Raod,
Kanti Nagar, Latur.

: Applicant/Appellant

Versus

The State of Maharashtra & Anr.

: Respondents

Mr. Aniket Nikam i/b Mr. Vivek N. Arote for applicant/appellant.
Ms. Grishma Lad appointed adv. For Respondent No.2.
Ms. G. P. Mulekar, APP for State.

CORAM : S. S. SHINDE,
SARANG V. KOTWAL, JJ.
DATE : 29th MARCH, 2022

P.C.

1. By this application, the Applicant is seeking his release on bail during the pendency and final disposal of Criminal Appeal No. 1609 of 2019.
2. The appeal is filed by the original accused Nos. 1 and 3 jointly. The present Applicant is the appellant No.2, who was original accused No.3 before the Additional Sessions Judge, Pune in Sessions Case No. 262 of 2009. There were in all three accused. Accused No.2 died during the pendency of the trial and the trial proceeded against accused No.1 and accused No.3 i.e. the present appellants. Both of them were convicted for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code, 1860 (for

short “IPC”) and were sentenced to suffer imprisonment for life.

3. The Applicant had earlier approached this Court for his release on bail by filing Interim Application No. 1/2019 in Criminal Appeal No. 1609 of 2019. The said application was filed by both the appellants. At that time, the said application was withdrawn. As far as accused No.1 was concerned, the court had expressed its disinclination to grant bail to him. As far as the present Applicant is concerned, the court had granted liberty to him to approach the court again by filing a fresh application after a period of six months from that order dated 14.01.2020. Pursuant to that liberty, this application is filed.

4. The offence is about commission of murder of one Rupesh. The incident had occurred in intervening night between 08.06.2008 and 09.06.2008. The First Information report was registered vide C.R. No. 80 of 2008 with Bharti Vidyapeeth Police Station, Pune on 11.06.2008.

5. The case of the prosecution is that, the accused No.1 was working as a recovery agent for the deceased. The deceased was in the business of money lending and had lent money to many people. There was some money dispute between the accused No.1 and the deceased. The prosecution case is that the deceased was taken in a Qualis Jeep by both the appellants and they committed his murder. The Applicant was arrested on 16.06.2008. During trial he was on bail and there is nothing on record to show that the Applicant has misused the said liberty.

6. As far as the evidence is concerned, there are three major circumstances against him. First is the extra-judicial confession made by the Accused No.1 before PW No.7-Naushad Usman Shaikh. The second circumstance is recovery of blood stained clothes of the Applicant from a tin shed. The same blood group was also found on the clothes of the deceased and other articles. The third circumstance is of recovery of a rope from the jeep which was used in the crime.

7. Mr. Nikam, learned counsel appearing for the Applicant submits that all circumstances are doubtful, and conviction based on the said circumstances cannot be sustained.

8. On the other hand, learned counsel for the respondent No.2 and learned APP relying on the same circumstances contended that the chain of circumstances is complete which proves the involvement of the Applicant in the crime.

9. We are considering the application for bail during pendency of the appeal for final hearing. Therefore, a detailed analysis of the evidence is not necessary. We have examined this evidence only for the purpose of consideration of grant or refusal of bail to the Applicant. These issues will be finally decided at the final hearing stage.

10. The first circumstance is regarding extra-judicial confession made by accused No.1 to PW-7 Naushad Shaikh. He was declared hostile and was

cross-examined by the learned APP. He was owner of the jeep which was allegedly used in the offence. He had given this jeep to accused No.1 and when it was returned, the middle seat cover was missing and the seat was found to be wet. He has further deposed that he and accused No.1 were having their meeting in Shiffa Hotel; and at that time, accused No.1 told him that the Applicant and the accused No.1 had finished Rupesh in that Qualis Jeep and had thrown the dead body in the Katraj Hills. At that time, accused No.2 was driving the jeep. The accused No.1 had threatened this witness not to disclose that fact to anybody.

In the concluding paragraph of his cross-examination by the defence, he has stated that accused No.1 had not told him that Rupesh was killed in the jeep and his body was thrown in the Katraj Ghat.

Thus, his version is not consistent and in the same deposition he has given contrary versions. This witness is not reliable. In any case, the conviction cannot be based solely on the confession of the co-accused.

11. The next circumstance of finding blood stained clothes of the accused, is also not a strong circumstance because the clothes were found from a tin-shed which was not enclosed and was accessible to all.

12. The third circumstance is of recovery of a rope from the jeep. The evidence shows that the jeep was recovered at the instance of accused No.1 and was parked in the police station. It was seized on 16.6.2008 and recovery

of the rope from the same jeep was effected on 19.6.2018 at the instance of the Appellant. Before that, the police had seized certain articles from the jeep. They were in control of the jeep since 16.6.2008. From 16.6.2008 to 19.6.2008, the police could not find the rope. Therefore, recovery of that rope is also not free from doubt.

13. Considering these pieces of evidence, the Applicant has made out a case for grant of bail during pendency of the Appeal. Hence, the following order :

ORDER

- (i) Interim Application No.2546/2021 is allowed.
- (ii) During pendency and final disposal of Criminal Appeal No.1609/2019, the Applicant – Ashfaq Issak Ali Sayyed is directed to be released on bail on his executing a PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) Interim Application is disposed of accordingly.

[SARANG V. KOTWAL, J]

[S. S. SHINDE , J]