

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.1755 of 2022**

|                          |               |
|--------------------------|---------------|
| Usman Ishak Khan         | .. Applicant  |
| Versus                   |               |
| The State of Maharashtra | .. Respondent |

...

Mr. Shaikh Hussain for the applicant.  
Ms. P.N. Dabholkar, APP for the State.

**CORAM: BHARATI DANGRE, J.**  
**DATED : 30<sup>th</sup> AUGUST 2022**

**P.C:-**

1           The applicant is seeking his release on bail on account of the non-involvement in subject C.R, which invoke Section 302 IPC and which came to be registered by one Parvez Sarvar Khan.

          The complainant, stated that on 4/8/2019, at about 11.15 p.m, when he reached near his house, his brother Javed, who was staying with him and running a Pan Kiosk had closed it and gone somewhere. He went to sleep, but when at 3.30 a.m, he went to fetch mosquito coil and a match-box from his brother Javed, he found him to be lying in a pool of blood with slit throat and on realizing that he is dead, he reported the matter to the police station on 5/8/2019. He expressed in his complaint that some unknown person had done his brother to death by means of

a pointed weapon.

2           The investigating machinery was set rolling and the Inquest Panchnama and the spot panchnama was conducted. The body was sent for post mortem and the report, reported five injuries in column no.17 and in column no.19, it record *Subcutaneous hematoma* on parietal region under injury nos.2 and 3 as well as subcutaneous hematoma on right temporal region. Injury nos.4 and 5 were opined to have been caused due to hard and blunt object. The cause of death was ascertained as '*shock due to throat injury*'.

During the course of investigation, statement of witnesses came to be recorded and this include the statement of one Ayesha Mushtaq Khan, Mushtaq Sayed Khan, Naved Khan and Zuber Khan as the key witnesses, apart from the other witnesses residing in the neighborhood who stated that they did not notice anything unusual on that particular night.

3           Ayesha Khan is the wife of Mushtaq Khan and she state that since Mushtaq was addicted to liquor and drugs, and he was arrested in connection with a theft case, his friend Usman (applicant) had assisted in securing his release of Mushtaq on bail. Ayesha came in contact with Usman and a love affair started between them. In 2018, she shifted to the house of Usman along with her two daughters. Her husband came in search of her and he assaulted Usman and therefore, she decided to accompany her

husband Mushtaq and started residing with him. After some days she returned to her aunt's house, but she continue to receive financial assistance form the applicant Usman. Mushtaq gave threats to her and the applicant that they should not stay together as she was not residing with Mushtaq.

As per her version, prior to two months, the younger brother of Usman, by name Imran was kidnapped by her husband, Mushtaq, Naved and one Tasvar and by detaining him the whole night, he was released. From that day, it is alleged that the applicant was in search of Mushtaq and Naved, but he was not able to trace them. Before one month, she once again started co-habiting with Usman (applicant). Before 20 days, her husband came in search of her and took her elder daughter. 10 days back he again visited the house where she was residing with Usman, but on not finding them there, he caused destruction in the house.

On 5/8/2019, she received a phone call from Usman, stating that he had killed Javed, brother of Naved. She was scared and therefore, she switched off the phone.

4 Another statement of Mushtaq compiled in the charge-sheet, refer to the affair of his wife with the applicant. The relevant portion of his statement is to the effect that on 6/8/2019, at around 2/30 p.m, Usman made a phone call to him and asked him whether he was not aware that he had killed Javed, the

brother of Naved and threatened him now it was the turn of his brother Ikhlāq and he also threatened Mushtaq.

Statement of Naved Khan is also on record, where he reiterate about a phone call made from Usman to Mushtaq. Statement of Zuber Khan compiled in the charge-sheet is to the effect that Parvez told him that their brother Javed is lying in a pool of blood. When they knocked the door of Bismillah Hotel, the shutter was open and 2 – 3 employees were sleeping inside but they had no knowledge about the death of his brother who was found lying outside the shop.

His version is based on hear-say evidence. The other statements of the employees, who were sleeping in the hotel are in sync with one another, and the witnesses have stated that they are not aware about anything that took place in the night.

Apart from the aforesaid material compiled in the charge-sheet, there is also one discovery panchnama drawn u/s.27 of the Indian Evidence Act, on arrest of the applicant, where he led to a folding knife, which was recovered from his house.

5           The prosecution case against the applicant is that Ayesha, wife of Mushtaq was having an affair with the applicant and on one occasion, the brother of the applicant was kidnapped by her husband along with Naved Khan, and in order to revenge this act, the applicant has committed murder of Javed, brother of Naved.

6           The material relied upon, in order to attribute him, the act of homicide is the extra-judicial confession made to Ayesha and Mushtaq. It is well settled position of law that extra-judicial confession is a weak piece of evidence and in absence of corroboration, on it's own, it will not be sufficient to convict a person. At this stage, since no material is compiled in the charge-sheet to establish the guilt of the accused/applicant, his further incarceration is unwarranted and he deserve his release on bail.

7           Observations made above are prima facie in nature and limited for the purpose of adjudication of the present applicant, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

Hence, the following order :-

### **ORDER**

- (a) The Applicant – Usman Ishak Khan in connection with C.R.No.852/2019 registered with Waliv Police Station, Palghar shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/ with one or two sureties of the like amount.

The applicant shall be released on cash bail of Rs.25,000/- in lieu of sureties for a period of 4 weeks. During the said period, the applicant shall arrange for the sureties.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.
- (d) The Applicant shall mark his attendance in the police station on first Saturday of every month between 10.00 am to 12 noon till framing of charge.

The Application is allowed in the aforestated terms.

**( SMT. BHARATI DANGRE, J.)**