

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2948 OF 2021

Kurban Ali @ Irfan Kasamali .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.V.R.Kasle with Mr.J.A.Shankhala for the Applicant.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

PSI Bhurak Koyal attached to Nagpada Police Station, present.

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CORAM: BHARATI DANGRE, J.

DATED : 21st JULY, 2022

P.C:-

1. The applicant is seeking his release on bail, on being arrested on 05/02/2021 in C.R.No.226 of 2014, registered with Nagpada Police Station.

The said C.R. arraigned four persons as accused and barring the applicant, the other accused persons were subjected to trial in Sessions Case No.761 of 2014, on filing of charge-sheet and vide judgment and order dated 27/06/2017, they came to be convicted for the offences punishable under

Sections 302, 392, 452 and 342 of the I.P.C. by the learned Additional Sessions Judge, Greater Bombay.

2. To complete the sequence of events, the three accused persons, who came to be convicted, filed distinct Appeals before this Court and on 24/02/2022, all three Appeals were allowed and all the appellants/co-accused in the subject C.R. came to be acquitted.

While acquitting the co-accused, the Appellate Court recorded a clear finding that the prosecution has failed to adduce any evidence, which would establish the charge under Section 302 against the accused. It was also recorded that the cause of death of the deceased was recorded as, asphyxia due to smothering/gagging and throttling and there are no ligature marks or thumb marks on the neck of the deceased, but a piece of cloth, being clogged in his mouth was a evidence of gagging. By referring to the injuries, it was conclusively held that prosecution has not proved the guilt of the accused beyond reasonable doubt and they came to be acquitted.

3. The present applicant is accused No.4 in the said C.R., who came to be arrested belatedly and to be precise on 05/02/2021. On completion of investigation, a separate charge-sheet came to be filed against him in April, 2021 and he

is now facing trial in Sessions Case No.526 of 2021.

4. The learned counsel would vehemently submit that apart from the fact that three co-accused have been acquitted as the prosecution has failed to prove that they are responsible for death of the deceased, the present applicant, in no way can be held guilty for the offence punishable under Section 302 of the I.P.C.

Learned counsel for the applicant would submit that prosecution case is, on 28/06/2014, one Abdul Hamid Ansari was found sleeping on the bed with the rug over his head. When he did not respond, the rug was pulled out and it was seen that his hands were tied to his back and both his legs were also tied together and a piece of cloth was stuffed in his mouth. This resulted in registration of the subject C.R. invoking Sections 302, 394, 452, 342 read with Section 34 of the I.P.C. and other three persons were arrested.

5. After seven years of the alleged incident, the applicant was arrested from Dombivli, on receipt of secret information and charge-sheet was filed against him.

The learned counsel would submit that there is no material to connect him to the said offence and particularly

when, after seven years, he came to be arrested only on the ground of suspicion.

The learned counsel would submit that the charge-sheet against the three accused persons reflected the fourth person as 'Imran' and the charge-sheet accused three co-accused of visiting the arrested accused Hanif @ Hamid Hasanali and the allegation is, their activities were suspicious. The learned counsel would vehemently submit that there is no test identification parade to prove that the present applicant was in contact with the co-accused or any other material compiled in the charge-sheet filed against the present applicant, which would establish his link with the other co-accused, who are acquitted by this Court.

The learned counsel would stressfully submit that the applicant is not 'Imran', but his name is Kurban Ali and the Aadhar Card as well as the Electoral Role of Madara Gadhi, Nanpara, U.P. clearly reflect his name as 'Kurban Ali @ Irfan Kasam Ali'. The learned counsel would submit that in any case, the fourth accused mentioned in the charge-sheet filed against the co-accused, was shown to be a wanted accused and he is named as 'Imran'.

6. When the material compiled in the charge-sheet is perused, it can be seen that there is nothing on record to establish that the applicant is the person, who conspired with the co-accused in eliminating the deceased by gagging.

In any case, even the co-accused are now acquitted of the charges for which they were tried, including Section 302, since the prosecution has failed to establish its charge against the co-accused. The applicant, who is resident of Nanpara, U.P., is not shown to have any connection with the subject C.R. and his incarceration, awaiting the trial, is unwarranted.

7. In any case, the applicant will take necessary consequences, on being subjected to the trial, with the learned Judge being mindful of acquittal of the three co-accused in the crime. The applicant is, therefore, entitled for his release on bail.

8. It is made clear that the observations made above are, *prima facie*, in nature, by referring to the original identity card of the applicant, which is placed before me and the observations made by this Court, while acquitting the co-accused in the Appeals filed by them and are limited for the purpose of deciding the bail application.

: ORDER :

- (a) Application is allowed.
- (b) Applicant – Kurban Ali @ Irfan Kasam Ali shall be released on bail in connection with C.R.No.226 of 2014 registered with Nagpada Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) 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 furnish his residential address and contact number to the Investigating Officer within a period of one week from the date of his release on bail and shall keep him updated about change in address, if any.
- (e) The Applicant shall attend the trial on regular basis, unless specifically exempted by the trial Court.

(SMT. BHARATI DANGRE, J.)