

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3375 OF 2021

1. Rukhsar Ahmed Shaikh	]			
2. Reshma Mehboob Sayyed	]	...		Applicants

Vs.

The State of Maharashtra	]	...		Respondent
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Mr. Kuldeep Patil with Ms. Saili Dhuru i/b Ms. Heena Suvarnakar for the applicants.

Ms. Anamika Malhotra, A.P.P. for the State.

Mr. B.M. Nikam, PI attached to Mumbra Police Station, Thane city, is present in the court.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 28TH JUNE, 2022.

P.C.:-

1. The two applicants are charge-sheeted on 22/05/2021 in C.R. No.I-165 of 2021 for the offences punishable under Sections 302, 201, 120(b) of the IPC. The applicant No.1 is arraigned as accused No.2 whereas, applicant No.2 is arraigned

as accused No.3 and both came to be arrested on 02/03/2021.

2. Heard learned counsel for the applicants and learned A.P.P. for the State and perused the charge-sheet, which is placed on record.

3. The case of the prosecution is that applicant No.1 Rukhsar Shaikh was married to deceased Ahmed Daud Shaikh, whereas, applicant No.2 is her sister, who was staying with her. The deceased was in friendly relationship with accused No.1 Mohammed Nafis Mohammed Shafiq Shaikh. The deceased was staying with his wife and sister-in-law in the same house.

4. The case of the prosecution is that Rukhsar i.e. accused No.2 was into an extra marital relationship with accused No.1 and, this was the reason, for the frequent quarrels between the couple. Accused No.3 being the sister of accused No.2 also shared the same relationship with the deceased, being her sister.

5. The prosecution allege that accused No.1, in conspiracy with accused Nos.2 and 3, by establishing contact on their mobile phones and being in contact with each other, made the deceased consume the liquor and hatched a conspiracy to eliminate him. It is also the case of the prosecution that the weapon, which was used in the crime, was purchased by accused No.1 and its image was forwarded to accused No.2 on the

WhatsApp. The prosecution allege that as per the conspiracy, accused No.1 invited the deceased for consumption of liquor and after he was intoxicated, he assaulted him by knife on his neck, which happened to be the cause for his death. Thereafter, it is alleged that, accused No.1 destroyed the liquor bottles. Accused No.3 Reshma is alleged to have destroyed the evidence by disposing of the mobile phone of the deceased and his spectacle. In support of the prosecution case, the charge-sheet has been filed, compiling various documents, which include the statements as well as the mobile phone belonging to the accused, which was forwarded for analysis.

6. The report of the analysis is received on 17/03/2022 and learned A.P.P. states that there are no incriminating WhatsApp messages, as mentioned in the forwarding letter found in the mobile phones of accused Nos.1 and 2. Further, the Forensic Science Laboratory also reported that the images of the object (knife), as given in reference document, is not found in the mobile phone of accused No.3.

7. As far as the offence under Section 201 of the IPC is concerned, since it is bailable, the applicant cannot be denied bail on the said ground. The question that arises for consideration is, whether there is any material compiled in the charge-sheet, establishing the criminal conspiracy of the applicants with accused No.1 in eliminating the deceased. The

learned A.P.P. fairly states that except a statement to one of the witnesses, who has referred to the relationship of accused No.1 and accused No.2, there is no positive evidence establishing the criminal conspiracy as understood in Section 120(b) of the IPC.

8. The applicants are arrested on 02/03/2021 and it is informed that till date, even the charge is not framed and it will take long time to conclude the trial.

9. Taking a *prima facie* view of the material compiled in the charge-sheet, which fail to establish a charge under Section 120(b) of the IPC and since it is not the case of the prosecution that the two applicants are responsible for the homicide independently, the applicants deserve their release on bail.

10. Needless to state that the aforesaid observations are made limited to the purpose of releasing the applicants on bail and shall not influence the trial court while determining the guilt of the accused on being tried. Hence, the following order:

ORDER

- (a) The applicants – **Rukhsar Ahmed Shaikh** and **Reshma Mehboob Sayyed** shall be released on bail in C.R. No.I-165 of 2021 registered with Mumbra Police Station, District Thane on executing P.R. bond to the extent of Rs.25,000/-

each and furnishing one or two sureties of the like amount.

(b) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The applicants shall attend to the trial court regularly, unless exempted.

11. The application is allowed in the aforestated terms.

12. All parties are directed to act on the downloaded copy of the order supplied by the advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]