

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

BAIL APPLICATION NO. 2033 OF 2022

Wasim Hanif Ahmed Khan

..Applicant

VS.

The State of Maharashtra

..Respondent

Mohin Khan a/w Bushra Sayed for the Applicant.

Ms. A. A. Takalkar, APP for the State.

Sachin Kulkarni, API, Bhiwandi Taluka Police Station is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2023.

P.C. :

1. Heard learned counsel for the applicant and the learned APP for the State.

2. This is an application for bail filed by the applicant-Wasim Hanif Ahmed Khan, in connection with C.R. No.I-177 of 2017, registered with Bhiwandi Taluka Police Station on 09/09/2017, for the offence punishable under Section 302, 201, 120B, 118, 202, 212, 34 of the Indian Penal Code, 1860.

3. By order dated 18/12/2020 in Criminal Bail Application no. 2012 of 2019, this court released co-accused Salauddin

Samshuddin Shaikh on bail. For ease of reference, this order is reproduced, which reads thus :

“1. The applicant is arrested on 9th September, 2017 in connection with C.R. No. I-177 of 2017 registered at Bhiwandi Taluka Police Station for the offences punishable under Sections 302, 201, 120(B), 118, 202, 212 r/w. 34 of Indian Penal Code, 1860 (“IPC” for short).

2. The prosecution’s case is that missing complaint was lodged on 23rd August, 2017 about missing of Mahendra Pratap Singh @ Thakur. Missing person had left Nallasopara on 16th August, 2017 with truck driven by him. It was revealed that one Wasim had joined missing person on truck as cleaner. Wasim Khan was taken into custody by police. He was brought to Valiv Police Station. Applicant was produced at police station for enquiry. Both were interrogated. They denied having knowledge about missing person. Subsequently Wasim Khan disclosed that on 18th August, 2017 Mahendra Singh had driven truck loaded with iron raw material. They left Jalana for Navi Mumbai. Shankar Chowdhari informed Wasim that he should sell material in truck to party. On 15th August, 2017 Wasim met Shankar and applicant at Kasara ghat, when truck was halted. Mahendra Singh refused to sell material from truck. They planned to kill him. All of them boarded truck. Shankar was driving truck. Applicant strangulated Mahendra Singh and Wasim caught him. Dead body was thrown besides road at Wadape. Human body was recovered.

3. Learned advocate for the applicant submitted that there is no evidence against the applicant. The prosecution is relying on the statement of the accused. There is no eye witness to the incident. Applicant is in custody from 14th August, 2017. The co-accused Javed Haiderali Shaikh @ Guddu was granted bail by Sessions Court.

4. Learned APP submitted that offence is serious. All accused conspired to kill deceased. Applicant is

involved in strangulating deceased. There is seizure of mobile phone from the applicant. There is evidence to show the involvement of the applicant. Motorcycle used by applicant to reach Kasara has been recovered. P. M. report supports prosecution case.

5. Undisputedly, there is no eye witness to the incident. The case is based on circumstantial evidence. Skeleton of body was recovered on 9th September, 2017. There are no strong incriminating circumstances to show the involvement of the applicant in the crime. The prosecution is relying on statement of accused to show involvement. Statement of Niyaz Khan do not refer to his conversation about scrap material with applicant. Statement of Abrar Khan also do not refer to involvement of applicant. Since last three years, the applicant is in custody.”

4. Learned APP states that there is material against the present applicant. The skeleton of the body was recovered on 09/09/2017 at the instance of the present applicant. Further, there was a bag which was recovered at his instance. However, considering the nature of the role assigned to Salauddin, it can be gathered from the allegation that the applicant’s involvement is as much as that of Salauddin who is released on bail. On the ground of parity, the applicant can be released on bail. The applicant is in custody for more than 5 years. The incarceration of the applicant is one of the fact that I have taken into consideration while releasing the applicant on bail. No

criminal antecedents are reported. The investigation is complete and the charge sheet is filed. Even the charge is not framed. The trial is not likely to commence any time soon. Hence, the following order.

ORDER

(a) The applicant – Wasim Hanif Ahmed Khan in connection with C.R. No.I-177 of 2017, registered with Bhiwandi Taluka Police Station, shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(b) The applicant shall report to the concerned Police Station once in a month i.e on the first Saturday of every month between 11.00 a.m. and 01.00 p.m. till further orders.

(c) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(d) 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 and should not tamper with evidence.

5. The Bail Application is disposed of.

(M. S. KARNIK, J.)