

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

CRIMINAL BAIL APPLICATION NO. 4175 OF 2021

Shri Mazahar Hussain Nurrulain Ansari
Age : 26 Years, Occu. : Fruit seller,
Resident at : Ansar Mohalla, Panya Chawl,
Behind Near Metro Hotel, Bhiwandi,
Bhiwandi – Thane.

...Applicant

vs.

State of Maharashtra,
[At the instance of Shanti Nagar
Police Station, Bhiwandi].

...Respondent

Mr. F. N. Momin – Advocate for the Applicant.
Mr. H. J. Dedhia – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

RESERVED ON : 23rd MARCH, 2023

PRONOUNCED ON : 28nd MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State at more than one occasion.
2. The present Applicant is accused of committing a murder of one Manojkumar Santlal Jaiswal – a resident of Bhiwandi. His father lodged a complaint about killing his son who was killed in the

intervening night of 9th January, 2021 and 10th January, 2021 in the open ground at Bhiwandi. It is lodged against an unknown person. The body was lying unattended and the First-Informant was contacted by the Police. During the investigation, the Police have filed charge-sheet against two Accused persons out of which present Applicant is Accused No.1.

3. The sum and substance of the Prosecution case is that the deceased used to sell bananas, whereas, the Applicant used to sell watermelon. When the deceased has refused to sell bananas to one woman customer, there was dispute in between the present Applicant and the deceased. That is why, the present Applicant by using mobile handset of Co-accused Mohammad Shaffiq Ramajanali Ansari called the deceased in front of an open land near Shandaar Market – Bhiwandi and caused his death. It is true that there are no eye witnesses but the case is based on circumstantial evidence. Offence is originally registered under Section 302 of Indian Penal Code, 1860 [“IPC”] against unknown persons. Charge-sheet is filed for offences under Sections 302 read with 34 of IPC.

4. Learned Advocate for the Applicant tried his level best to submit that circumstances are not sufficient to continue the

detention of the Applicant. But when I have considered them, I find that no case for bail is made out and there are sufficient materials to authorize the detention of the Applicant behind bar. I will give reasons for the said decision.

5. It is important to note that at the instance of the present Applicant, one knife used in the commission of offence is seized as per the provisions of Section 27 of the Indian Evidence Act, 1872. There is contention that the place is accessible to all. Knife was concealed in heap of soil. So, the place may be open, however, it cannot be said that the public in general are aware of it.

6. There is one more circumstance about recovery of mobile handset of Vivo company belonging to the deceased at the instance of the Applicant. The panchanama is on Page No.130. The sim card of GEO company was found in it. This mobile was with one Tanjila Ansarul Haq Ansari at the time of seizure. The Prosecution claims that it was gifted to her by the Applicant after the offence and she was his fiancée. This sim card does not belong to deceased. Furthermore, the Applicant made attempts to break open the lock of that mobile. Initially, he was not successful when he met a witness Mohammad Irfan Shaikh. However, said Mohammad was successful

in breaking open the lock through witness Mohd.Adil Shaikh. After that, witness Mohammad Irfan used that mobile handset by inserting sim card and then, returned it to the Applicant. Both the witnesses were approached by the present Applicant.

7. There are two submissions made. The identity of this seized mobile with the mobile of deceased is not proved and in fact, the witness Mohd. Adil Shaikh has inserted the sim card of his brother in that mobile handset. An argument was tried to be canvassed without accepting that the Applicant has purchased that seized mobile from the witness Mohd. Adil Shaikh and it does not belong to deceased.

8. Learned APP wants to rely upon the subscriber details and call detail reports ("CDR"). As per the subscriber details submitted by the cellular company – Bharti Airtel, sim number is 8412890482. Subscriber is one Manojkumar Jaiswal i.e. the deceased. The call details report are on Page Nos.121 onwards. On call details report on Page No.121, the mobile number of the deceased and mobile number of the Co-accused used by the present Applicant are disclosed. Even though, it may be true that when the mobile handset of the deceased was seized from the witness Tanjila, sim card found in it was different. In the CDR reports, IMEI number

866247040504334 of that mobile handset (as mentioned on Page No.132 – memorandum of panchnama), it finds place.

9. The IMEI number consists of 15 digits. There are two IMEI numbers to that mobile handset described on Page No.132. Out of them, sim was inserted at one slot that is why in the CDR reports, one IMEI number mentioned on Page No.132 is disclosed.

10. There was an attempt to argue that the digit of IMEI number reflected in those documents does not tally with each other. It may be true. However, according to the learned APP, it is a technical detail and if other details are there, the difference in the last digit does not make difference. For that purpose, he relied upon a judgment in case of ***Sundar @ Sundarrajan V/s. State by Inspector of Police***¹. The Hon'ble Supreme Court has dealt with the Review Application. My attention is invited to Para No.18 to Para No.24. Similar controversy is decided and what may be the reasons for difference in last digit of IMEI number is observed in Para No.24. It relates to a technical subject.

11. For these reasons, the grievance of the Applicant about not establishing the identity cannot be accepted. Even the contention that the Applicant purchased the mobile from the witness cannot be

¹ Review Petition (Clr.) Nos. 159-160 of 2013 and Criminal Appeal Nos.300-301 of 2011 : decided on March 21, 2023 : Supreme Court of India

accepted. The witness does not say so. There is a statement of the fiancée Tanjila on Page no.141. She has said that the mobile handset was gifted to her by the Applicant. So, there are materials to believe that this mobile handset belongs to the deceased. It is surprising how the Applicant got possession of that mobile handset.

12. So, above said circumstances are sufficient enough to deny bail to the Applicant even though, there are no eye witnesses. Whether the chain is fully established or not can be decided at the time of trial. At this stage, it is sufficient material.

13. The role of present Applicant is different from Co-accused Mohammad Shafiq Ramjan Ali Ansari. He has suppressed the name of present Applicant and suppressed about present Applicant calling the deceased by using his handset. (that is of Accused Mohammad Shafiq). So, benefit of parity cannot be extended to him.

14. Hence, Application is rejected.

15. It is true that the present Applicant is behind bar since 2nd January 2021, and yet the trial has not started. The Applicant is granted liberty to move for bail, if the trial will not start within one year from today.

16. Application is rejected.

[S. M. MODAK, J.]