

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 138 OF 2024

Parmeshwar Shrirang Shelke

VERSUS

The State Of Maharashtra

...

Advocate for Applicant : Mr. Salunke Sudarshan J

APP for Respondent/State : Mr. A.S. Shinde

...

CORAM : S.G. MEHARE, J.

DATED : FEBRUARY 09, 2024

PER COURT:-

1. Heard the learned counsel for the applicant and learned APP for the State.
2. This is a successive bail application of the applicant in Crime No.86 of 2017, registered with Ambad Police Station, District Jalna, for the offence punishable under Sections 302, 504, 506 r/w 34 of the Indian Penal Code.
3. After hearing the respective counsels at length, his earlier bail application was rejected, observing that this Court had considered the charge sheet and declined to grant the bail. Hence, on instructions, the application was withdrawn.
4. Learned counsel for the applicant submits that subsequent thereto, the co-accused who had attributed the identical role have been granted bail. He has placed their bail orders. He has referred to the dying declaration of the deceased. He vehemently

argued that the deceased did not specify the name of the applicant administering the poison. There was an inordinate delay in lodging FIR. The so-called eyewitnesses subsequently developed the case. There was no further investigation after rejecting 'A' summary. The same papers from the earlier investigation were submitted with the charge sheet. He tried to argue that once the police station officer concluded that no offence was made out and the "A' summary was rejected, a fresh inquiry or investigation was to be made. But it was not done. Therefore, on the same grounds and on the same investigation papers, the prosecution cannot oppose the application.

5. Before adverting to the arguments of the learned APP, it would be appropriate to mention that the facts now argued were before the Court when the earlier bail application was considered. This Court, considering the material against the applicant, declined to grant the bail.

6. Learned APP opposed the application. He would point out that there are eyewitnesses against the applicant stating that the applicant administered the poison to the deceased. The 'A' summary was filed only on the grounds of CDR report. The rejection of 'A' summary was never challenged. Once the 'A' summary is rejected, the investigating officer is bound to file a charge sheet. The Court declined to admit the opinion of the investigation put forth with 'A'

summary. The role attributed to the applicant is not similar to the co-accused. Hence, parity could not be granted.

7. 'A' summary filed by the investigating officer against the applicant and co-accused has been rejected. Admittedly, it was not impugned. Where there is no clue whatsoever about the culprits or property or where the accused is known, but there is no evidence to justify his being sent to the Magistrate for trial, the investigating officer may submit 'A' Summary to the Court. It is an opinion of the investigating officer that is not binding upon the Court. When the Court refuses such submissions, it does not always mean that the investigating officer has to collect new evidence against the accused. Therefore, this Court is of the view that filing the charge sheet on the basis of earlier evidence collected is not bad in law. Now, the matter has been sent to the Court to test the veracity of the allegations and proof of the crime.

8. In addition to the allegations against the co-accused of administering the poison, there are two witnesses who have stated explicitly in their statements that it was the applicant who administered the poison to the deceased. Here is the disparity. The law is well settled that the criminal Court cannot review its orders. Only the appellate or the revisional authority can interfere. Where the Court makes the decision on the basis of certain facts and circumstances, those cannot be reviewed. Therefore, the law for the

subsequent bail application is that circumstances should be substantially changed.

9. After having gone through the papers, this Court is not satisfied that there were substantial changes in circumstances, and the applicant deserves parity. Hence, the application stands dismissed.

(S.G. MEHARE, J.)