

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.96 OF 2021**

Arshad Abdul Hasaan Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr.Hakim Salim for the applicant.
Smt. Mahalakshmi Ganpathy, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 23rd APRIL, 2024**

P.C:-

1 This is a second bail application filed by the applicant Arshad Abdul Hasaan Khan, who face charge under Section 302, 364, 201 r/w 34 of IPC in a C.R No. I- 65 of 2018, registered at Chitalsar Police Station.

The first application filed by the applicant came to be rejected on 13/08/2019, and the second application is moved on the ground of delay in conclusion of the trial, as it is submitted that only 5 witnesses are examined and 26 witnesses are yet to be examined, and therefore the request is made for securing his release.

2 Heard Advocate Hakim Salim for the applicant, the learned APP Smt. Mahalakshmi Ganpathy for the State.

The Investigating machinery was set rolling, on one Shakti Dhongde, working as lifeguard, on the swimming pool in Nilkant Heights, Pokhran Road no.2, Thane, and also resident of the same building, on 25/03/2018, while passing the society gate, noticed that around 2:30 p.m one rickshaw stopped near the bus stop and 5

persons alighted. He gave the description of 4 persons by referring to the clothes worn by them and he noticed that they were dragging one person towards the open space next to Shripath Patil garden.

One person amongst the four was assaulting him by kick and fist blows and the person, who was being dragged was pleading with them to leave him, but the four persons were saying in Hindi, that they are going to kill him.

Thereafter, the second person amongst the four picked up a beer bottle and broke it on his head and even stabbed him with the bottle near his neck. The third person caught hold of him and the fourth person with the help of the weapon in his possession caused injuries to him on his head, neck, hands.

Once the injured fell down all the persons ran towards Gandhi Nagar.

3 On the above incident being reported, it resulted into registration of C.R. No. I-65 of 2018 with Chitalsar Police Station invoking Section 302 r/w Section 34 of IPC against the 4 accused persons.

Pertinent to note that the F.I.R. was registered against unknown persons, although the complainant had given the description of the assailants.

4 The complainant participated in the test identification parade to establish the identity of the assailants and on 21/05/2018, he failed to recognize the assailants and he recorded a statement to the effect that since he was scared, he started trembling and could not recognize the accused persons.

Thereafter, another test identification parade was conducted on 18/08/2018, almost 3 months after the incident and this time he identified the applicant.

The learned APP has placed before me the memorandum of the test identification parade.

5 It is very difficult to believe that the person cannot identify the suspects immediately after the incident, but after 3 months he could point out to two of them and considering the earlier statement of the complainant, that he was scared and could not identify the assailants, the test identification parade in my opinion is *prima facie* doubtful.

6 In any case the applicant is incarcerated since 26/03/2018 and the co-accused Vivek Sikandar Yadav is already released on bail by order dated 15/03/2019.

The learned APP made a feeble attempt to rely upon the statement of Ms.Chandani, as it is the case of the prosecution that since she shared a proximate relationship with the deceased, co-accused Gopal Yadav and Ratanlal Yadav caused him to death. It is the case of the prosecution that as on 25/03/2018, between 2:00 to 2:15 p.m. when she went to Viviana Mall to meet Wasim Khan and while she was chatting with him, co-accused Gopal Yadav and Arshad on seeing them together assaulted Wasim Khan. Thereafter Ratanlal Yadav, another co-accused was called at the spot, and it is alleged that they abducted Wasim Khan, and took him near Dharamveer Nagar, where he was assaulted with glass bottle, fist, kick blows resulting into his death.

As far as statement of Ms. Chandani is concerned, it do not lead any credence to the prosecution case, as according to her she was made to sit in a auto-rickshaw and pushed away from the spot. She is not the witness to the actual assault, on the deceased.

No doubt the death is caused due to hemorrhagic shock following the stab injuries to neck and other multiple injuries but the question is whether the applicant is the assailant.

Considering the long period of incarceration, despite the fact that the trial has commenced since almost 26 witnesses are to be yet examined, I deem it appropriate to release the applicant on bail.

Hence, following order.

ORDER

- (a) Application is allowed.
- (b) The Applicant Arshad Abdul Hasaan Khan shall be released on bail in C.R. No. I-65 of 2018 registered with Chitalsar 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 report to the concerned police station on first Monday of every trimester between 3:00 to 5:00 p.m.
- (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.
- (e) The Applicant shall attend the trial on regular basis.

(SMT. BHARATI DANGRE, J.)