

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.209 OF 2024

Mohammed Arif Mohammed Tahir .. Applicant
Khan

Versus

The Sr. Police Inspector and anr. .. Respondents

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Mr.Mateen Shaikh a/w Shrinivas Kshirsagar, Ansar Tamboli,
Jammu Shaikh, Razique Shaikh, Arshad Shaikh, Muskan Shaikh,
Afrin Khan, Ejaz Shaikh, Parvez Inamdar, Adil Shaikh,
Muzanamil Shaikh for the Applicant.

Ms.Sangita E Phad, A.P.P. for the State.

Mr. Dhanraj Shirsat, P.S.I. Boisar Police Station.

CORAM: BHARATI DANGRE, J.

DATED : 15th APRIL, 2024

P.C:-

1 This is a second bail application preferred by the applicant, who face accusation under Section 302, 201 r/w 34 of IPC in C.R. No. 245 of 2020 registered with Boisar Police Station, Palghar. The applicant came to be arrested on the very same day, when the FIR was registered and he is incarcerated since then.

 It is submitted that the charge has been framed but the trial is yet to commence.

2 It is the case of the applicant, that he is arraigned as an accused based on circumstantial evidence and it is in form of a statement of Abul Hasan Manajirul Hasan Sayyed recorded on 30/08/2020 i.e. two days, after the registration of a missing complaint and when the body of the deceased Shivratan alias Shivam was recovered from a playground.

It is to be noted that initially a missing complaint was filed by Kumari Sonali Rai, sister of the deceased informing that from 23/08/2020, her brother had left the house at around 9:30 p.m. and he had informed his mother that his friend Abujar had called him and he shall return back in 5 minutes. Since he did not return and after inquiry with his friends, he could not be traced, a missing complaint was lodged on 25/08/2020.

On 26/08/2020, his body was recovered from an open ground and the complainant identified him from the apparels on his body.

3 Upon the offence being registered, the statement of one, Abul Sayyed was recorded, where he stated that the two accused Abujar and Arif i.e. the present applicant visited him between 8:00 to 8:15 p.m. on 23/08/2020 and they collected some chilly powder in a pouch and Arif Khan i.e. the applicant wore a shirt of Hazrat Ali. He inquired with both of them, as to what they were upto but they avoided to respond. Abujar picked up a wire from the house he saw them leaving.

Around 11:15 also they returned with solid clothes

and when questioned, they replied, that they had fallen into a ditch, and therefore, and this is why their clothes were soiled.

4 Apart from this, there is statement of one Prabhat Gupta, who has stated that he had gone to Shivam's house around 9:00 p.m, when he was constantly receiving messages on his mobile and he also received one whatsapp call and he was talking to the person at other end by showing his disinclination to come to some venue but ultimately by handing over the mobile phone to his brother, he left the house. When he was asked, where he is going towards, he informed that he is going to pickup his vehicle, but he did not return home.

5 When the learned APP is specifically asked as to what is the other incriminating material, apart from these statements, which would form a link in the circumstantial evidence, connecting the present applicant to the deceased, she submit that there is none.

As far as the case based on circumstantial evidence is concerned, unless and until the guilt of the accused is sufficiently established through the chain of circumstances, one linked to another, the sole circumstance of the two accused persons moving out of the house of Prabhat with chilly powder will not be sufficient.

Apart from this, the inconsistency in the two statements is also glaring, as according to Abul, at around 8:00 to 8:15 p.m. the two accused left the house, whereas according to

Prabhat, Shivam was present in the house after 9:45 p.m. and therefore *prima facie*, even these statements are not leading to the guilt of the applicant.

In any case, since the case is based on circumstantial evidence, the burden would ultimately lie on the prosecution to establish the chain of the circumstances, which should inevitably point out that, it is the applicant, who has caused the death of the deceased. Being incarcerated for almost four years with no progress in the trial and 36 witnesses being cited in the charge-sheet, the conclusion of the trial appears to be a distinct impossibility.

The applicant, a young boy of 20 years cannot be incarcerated indefinitely, though he may take the consequences of the accusations. He is therefore entitled to be released on bail subject to the following conditions:

ORDER

- (a) Application is allowed.
- (b) The Applicant Mohammed Arif Mohammed Tahir Khan shall be released on bail in connection with C.R. No.26/21 registered with Boiser Police Station (Session Case No.245/2020) on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) He shall mark his attendance to the concerned Police Station, on first Monday of Trimester between 3:00 p.m to 5:00 p.m.

- (d) He shall attend the trial on regular basis.
- (e) He 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.

(SMT. BHARATI DANGRE, J.)