

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 465 OF 2024

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DEEPAK
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Date: 2024.02.13
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Shambhukumar Suresh Mahato

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Aniketa Aher Sawant, for Applicant.

Mr. S. R. Aagarkar, APP for State/Respondent.

Mr. Prashant S. Tayade, Rabale Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 9th FEBRUARY, 2024

PC:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) This application is preferred for bail in connection with CR No. 93 of 2013, registered with Rabale police station, for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 ("the Penal Code").

3) Bablu Lalu Pashi, (the deceased), the brother of Mrs. Moni Sushil Pashi, was a friend of the applicant. They were engaged in the business of selling Idlis. The applicant and Bablu both were

given to the vice of drinking liquor. There were quarrels between the applicant and the deceased. On 21st February, 2013, the applicant had come to the house of the deceased. The applicant had taken the deceased away on the pretext that he wanted to discuss an important matter with him. Both had consumed liquor. At about 4.30 pm, the applicant alone returned to the house of Mrs. Moni. Upon being inquired, the applicant gave an evasive reply as Bablu did not return till 22nd February, 2013. In the meanwhile, the body of an unknown person was found in the creek. Mr. Naresh Patil reported the matter to the police. It transpired that the body was that of the deceased.

4) The applicant came to be arrested on 15th March, 2013. The applicant has been in custody since then.

5) The learned Counsel for the applicant submitted that till date, the prosecution had examined seven witnesses. The applicant has been in custody for more than 11 years. In the circumstances, the applicant deserves to be released on bail.

6) The learned APP resisted the prayer for bail. It was submitted that the trial be expedited and the learned Sessions Judge seized with Sessions Case No. 115 of 2023 be directed to conclude the trial in a time bound manner.

7) I have considered the material on record and the submissions canvassed across the bar. Prima facie, the prosecution case rests on circumstantial evidence. The circumstances arrayed against the applicant are: an extra-judicial confession allegedly made by the applicant and the discovery made by the applicant leading to the recovery of the weapon of offence.

8) The Court is informed that the prosecution has yet not examined the material witnesses namely Mrs. Moni, the sister of the deceased, and Rajan Vargis with whom the applicant was working. It is trite in a case based on circumstantial evidence, the prosecution should be in a position to establish the chain of circumstances which unerringly point to the guilt of the accused and the circumstances should be incompatible with the innocence of the accused. In the instant case, there is material to indicate that the applicant and the deceased were drunk. There does not seem to be evidence throwing light on the circumstances in which the deceased died.

9) In aforesaid view of the matter, the fact that the applicant has been in custody for 11 years, cannot be lost sight of. The prosecution has yet not examined the material witnesses. In the circumstances, it cannot be stated with certainty that

the prosecution would be able to examine material witnesses within a period of a couple of months.

10) The prolonged incarceration without the prospect of the conclusion of the trial within a reasonable period infringes the fundamental right guaranteed under Article 21 of the Constitution of India. In the case at hand, the applicant has been in custody for 11 years. Further detention of the applicant as an under-trial prisoner would be wholly unjustifiable and unwarranted.

11) I am, therefore, inclined to exercise the discretion in favour of the applicant.

12) Hence, the following order:

: O R D E R :

(i) The application stands allowed.

(ii) The applicant Shambhukumar Suresh Mahato be released on bail in CR No. 93 of 2013, registered with Rabale police station, for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at the concerned Police Station on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The applicant shall not leave the limits of Thane and Navi Mumbai Districts without prior permission of the trial Court.

(vi) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]