

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

BAIL APPLICATION NO. 438 OF 2023

Mohd. Shahazeab Shohab Ansari	...Applicant
Versus	
The State of Maharashtra	...Respondent

Ms. Nazneen Khatri, a/w Khatri M. Adil Sagar Samel, for the Applicant.

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

API Shriram Ghodke, Crime Branch, Unit-9, present.

CORAM: N. J. JAMADAR, J.

DATED: 7th MARCH, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in CR No.43 of 2022 registered with DCB, CID, Unit No.9, Mumbai, (original CR No.235/2022 registered with Varsova Police Station) for the offences punishable under Sections 302 and 201 of the Indian Penal Code, 1860 ("the Penal Code") has preferred this application to enlarge him on bail.
3. The gravamen of indictment against the applicant is that the applicant was in a relationship with Miss 'S', a 19

year old girl. The applicant had allegedly strangled the deceased in his room and dumped her body by packing the same in gunny bags in a rivulet.

4. On 28th April, 2022, an intimation was received that a human body packed in gunny bags was found on the beach at Varsova. The body was retrieved. It appeared to be the body of a female. The deceased appeared to have been strangled by means of an internet cable and by the very cable her body was tied and dumped in the gunny bags. During the course of investigation, it transpired that in the past, Miss 'S' was seen having conversation with the applicant. It further transpired that on 25th April, 2022 at about 10.30 pm the applicant was seen carrying stuffed gunny bag on a Scooty. Further enquiries revealed that the applicant had collected two gunny bags from witness Mithailal Yadav, who runs Shambhu General Stores. The applicant had taken the Scooty from witness Mubarak alias Ammu on the very day and he was seen carrying a stuffed gunny bag on the Scooty on 25th April, 2022. As the investigation revealed the complicity of the applicant, he came to be arrested. The applicant made discovery under Section 27. In the house search of the applicant those items

which were found in the gunny bags alongwith dead body were also found in the house of the applicant. Post completion of investigation, charge-sheet came to be lodged.

5. Ms. Khatri, the learned Counsel for the applicant, submitted that there is no material to show that the applicant and the deceased were in a relationship. Had the applicant and the deceased been in a relationship, there must have been CDR or exchange of messages to show the same. In the absence of an iota of material to demonstrate that the applicant was in a relationship with the deceased, the very foundation of the prosecution case dismantles, urged Ms. Khatri. The applicant is sought to be roped in solely on the basis of CCTV footages. However, the applicant has furnished the CCTV footages which show that the applicant was carrying a small bag. It was not humanly possible to pack a grown up human body in such a small bag. Therefore, the prosecution version is inherently improbable. Hence, the applicant deserves to be released on bail.

6. As against this, the learned APP submitted that if the circumstances arrayed against the applicant are cumulatively considered, a very strong *prima facie* case can be said to have been made out against the applicant. Firstly, there is

evidence to show that in the evening of the occurrence the applicant had collected two gunny bags from Mithailal. The applicant had borrowed Scooty from Mubarak alias Ammu. After a while, the applicant was seen carrying stuffed gunny bag on the Scooty. The body of the deceased was found dumped in those very gunny bags. Moreover, the articles which were packed alongwith the body in those gunny bags were also found in the house search of the applicant. Lastly, the sister of the deceased has stated that the mobile phone of the applicant indicated that he had twice called the deceased. In the totality of the circumstances, according to Mr. Aagarkar, the learned APP, a very strong *prima facie* case is made out against the applicant and, therefore, he does not deserve to be released on bail.

7. Undoubtedly, the prosecution case rests on circumstantial evidence. Evidently, the witnesses have stuck to their version before the police when their statements were recorded before the learned Magistrate under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"). Mithailal has categorically stated that on 25th April, 2022, at about 9.30 pm, the applicant had come to his shop and requested to provide two big gunny bags to carry the belongings to his

home town. Mithailal had given two big gunny bags to the applicant. Mithailal states those were the very gunny bags in which the body of the deceased was allegedly found.

8. Mubarak alias Ammu states that on 25th April, 2022 after the applicant collected the gunny bags from Mithailal the applicant approached him and requested for his Activa Scooty. The applicant took away his Scooty. Jafar Mansuri states that on the very evening he had seen the applicant proceeding to his home alongwith Scooty and after a while carrying a stuffed gunny bag on the Scooty. Arbaz, another witness, states that on the night of occurrence at about 10.00 pm he had gone to the room of the applicant to collect money and the applicant was then packing something. Another witness has stated that on 25th April, 2022 at about 10.00 pm she had seen the applicant climbing down stairs of his room alongwith a big gunny bag. He appeared in a frightened state.

9. Though the discovery allegedly made by the applicant did not lead to any discovery of a fact as the applicant had allegedly pointed out the place where he had thrown the dead body. Yet, the fact that parts of the articles which were found alongwith dead body, being, pillow cover, pieces of clothes

and internet cable were also found in the house search of the applicant, *prima facie*, has incriminating tendency. The most incriminating circumstance appears to be the finding of the body of the deceased in the very gunny bags which the applicant had allegedly collected from Mithailal.

10. In the backdrop of the aforesaid material, at this stage, it would be difficult to accede to the submission of Ms. Khatri that there are no incriminating circumstances. The question as to whether the applicant was carrying small bag as contended by the applicant and not two big gunny bags as claimed by the prosecution, would be a matter for adjudication at the trial.

11. At this stage, there are *prima facie* incriminating circumstances in the nature of the applicant collecting the gunny bags, borrowing the Scooty, carrying stuffed gunny bag on the Scooty and the dead body of the deceased having been found in the very same gunny bags. I am, therefore, not inclined to exercise the discretion in favour of the applicant.

12. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the 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.]