



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1003 OF 2024**

Chand Mehboob Shaikh	...	Applicant
versus		
The State of Maharashtra	...	Respondent

Mr. Shriganesh S. Sawalkar with Ms. Poonam Karande, Ms. Manjiree Dhuri, Ms. Gayatri Yadav, Mr. Kunal Aher, Ms. Ashwini Ghadge, for Applicant.
Mr. Tanveer Khan, APP for State.
API Mallinath Koke, Kolsewadi Police Station Kalyan present.

CORAM: N.J.JAMADAR, J.

DATE : 15 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Sessions Case No.143 of 2015 pending on the file of the learned Additional Sessions Judge, Kalyan arising out of C.R.No.122 of 2014 registered with Kolsewadi Police Station, Kalyan for the offences punishable under Sections 302, 201, 460 read with Section 34 of the Indian Penal Code.
3. At the outset, learned Counsel for the applicant submits that the applicant has been in custody for more than 10 years. The applicant was arrested on the basis of suspicion on 17 March 2014. Co-accused was released on bail by this Court by an order dated 16 September 2014. Though, the trial has commenced, yet, it is unlikely that the trial can be concluded within a reasonable period. Therefore, the applicant be released on bail.

4. Learned APP resisted the prayer for bail. It was submitted that the blood stained clothes and cash amount of Rs.50,000/- were recovered pursuant to the discovery made by the applicant. The role attributed to the applicant is distinct from that of Akram Shaikh (A2), who has been released on bail.

5. I have perused the order passed by this Court releasing Akram Shaikh, the co-accused, on bail. The observations in paragraphs 3 to 5 read as under :

“3. On 16/03/2014 itself, the police had arrested original accused No.1 Chand Mehboob Shaikh @ Akbar. While in police custody he had admitted that he had committed the said offence. While in custody, he had informed the police that he was accompanied by present applicant. On the basis of the said statement of accused No.1, present applicant was arrested. While conducting house search of the present applicant, on 20/03/2014, investigating agency had seized a blood stained uniform. Stains appeared to be washed. However, the said clothes have been sent for chemical analysis.

4. It is pertinent to note that the investigating agency has not recorded the statement of watchman of the said building to ascertain the identity of the persons who had visited the house of the complainant after 3.00 pm. It is an admitted position that deceased was alive at least till 2.00 pm to 3.00 pm. There is a faulty investigation and the accused would benefit only because of faulty investigation. It is the case of prosecution that present applicant and accused no. 1 are working with Manish Gas Agency and they had delivered the gas cylinder to the house of the complainant and had committed the said offence. It is pertinent to note that the owner of Manish Gas Agency has disclosed to the police that the cylinder was delivered in the house of the complainant on 15/03/2014 and that the delivery boys have submitted the money and receipt on 15/03/2014.

5. Investigating agency has not recorded the statement of any neighbour or any independent witness to even indicate that the present applicant had

visited the house of the complainant on 16/03/2014. As far as accused no. 1 is concerned, there is recovery of Rs. 50,000/- from the house of the accused no.1. Complainant has stated in the F.I.R. that there was theft of Rs. 40,000/- to 50,000/- from his house. Moreover, original accused no. 1 has criminal antecedents and therefore, police had apprehended him on suspicion and in the course of inquiry, he had admitted to have committed an offence and there was recovery of the sum of Rs. 50,000/- from his house which established a nexus of the accused no. 1 with the alleged incident. However, as far as the case of the present applicant is concerned, compilation of the charge-sheet does not have any document to indicate any link evidence against the present applicant, except the statement of the co-accused. Upon perusal of the said statement, it cannot be said even at this stage that the said statement could be considered under section 30 of the Evidence Act since accused no. 1 has only disclosed that he was accompanied by present applicant. At this stage, it would not be proper to consider the said statement of the co-accused which is recorded while in custody, to connect the present applicant with the present applicant with the said offence. Learned APP has fairly submitted that the applicant does not have any criminal antecedents.”

6. It is true the Court has adverted to the fact that there was recovery from the applicant, yet, the other factors, like, defective investigation and absence of material to indicate that the applicant, along with the co-accused, had visited the house of the deceased on the day of the occurrence, enure to the benefit of the applicant as well.

7. Evidently, the case rests on circumstantial evidence. The applicant has been in custody since more than 10 years. Such long period of incarceration, in the backdrop of the nature of the evidence, which the prosecution proposes to adduce to

bring home the charge to the accused, renders further detention of the applicant wholly unwarranted. I am, therefore, inclined to exercise discretion in favour of the applicant.

8. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Chand Mehboob Shaikh be released on bail in C.R.No.122 of 2014 registered with Kolsewadi Police Station on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Kolsewadi Police Station on first and third Monday of every month between 11 am to 1 pm till the conclusion of the trial.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.

Application disposed.

(N.J.JAMADAR, J.)