

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

CRIMINAL BAIL APPLICATION NO.1643 OF 2024

Ubed Jamal Shaikh Applicant
Versus
The State of Maharashtra Respondent

Mr. Sanjiv Punalekar, Advocate a/w. Sachin Kanse i/b. Jyoti Ghorpade for the Applicant.

Smt. Madhavi H. Mhatre, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th MAY, 2024

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No.777/2019 dated 8.10.2019 registered at Malvani Police Station, Mumbai under sections 302, 397, 452, 341, 120-B read with 34 of IPC. The Applicant was arrested on 14.10.2019. Since then he is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Mr. Sanjiv Punalekar, learned counsel for the Applicant and Smt. Madhavi Mhatre, learned APP for the Respondent-State.

3. The case of prosecution is that between the night of 7.10.2019 and 8.10.2019, four persons including the present Applicant entered the house of one Kanchan Gupta. She was strangled and the accused committed robbery in her house. They took away the gold chain, gold ear rings, mobile phone of Redmi company and the amount of Rs.1,50,000/- from her house. In the morning, her son came back from his work to find that Kanchan was lying on the floor. He immediately called his aunt and uncle who were staying on the upper floor. Kanchan was taken to the hospital, but, she was declared dead. On these facts, the FIR was lodged against the unknown persons. The investigation was carried out and during the investigation it was found that one Rafiq @ Sharif was knowing that Kanchan was having cash and ornaments in her house. Therefore, he informed the present Applicant and Abdul Rehman Shaikh. They committed the murder and committed robbery.

4. Learned counsel for the Applicant submitted that there is hardly any material against the present Applicant in

the entire charge-sheet showing his complicity in the offence. There is only vague evidence of recovery of ear ring. On that basis it is difficult to conclude that the Applicant had committed murder. At the highest it could be termed as receiving stolen property. It is further submitted that the identification of those ornaments is also not proper. He further submitted that there is no other circumstance in the nature of test identification parade etc.. In short, there is no material against the present Applicant.

5. Learned APP submitted that the stolen property was found with the Applicant. Therefore, there is a presumption running against him. He will have to explain that circumstance particularly when those ornaments were identified by the sister of the deceased.

6. I have considered these submissions. The charge-sheet contains statements of Pavan Gupta, Alluddin Chaudhary, Mohd Abdul Mulla on the point that they had seen Shafiq Khan bringing two unknown persons towards the house of the deceased and pointing that house to those

persons. The prosecution case appears to be that those unknown persons were the two accused who had committed the offence and the Applicant was one of them. However, there is no connecting piece of evidence in the form of test identification parade. Therefore, that circumstance at this stage is not incriminating against the present Applicant. The only material which needs serious consideration is about recovery of ear ring. That memorandum panchnama was recorded on 25.10.2019 and the Applicant had taken the police to a room at Malad. The Applicant removed the clothes and two ear rings. There is no connection of those clothes with the offence as there is no C.A. report on record. However, the ear rings were shown to the sister of the deceased on 18.12.2019. At that point, she has allegedly identified those ear rings. That is the only circumstance against the present Applicant. The prosecution will have to lead sufficient evidence to connect that recovery with the commission of murder. At this stage, there appears to be a weak material against the present Applicant. The Applicant is already in

custody since 14.10.2019. Therefore, the Applicant can be released on bail. Learned counsel for the Applicant voluntarily states that the Applicant shall furnish the local surety.

7. Hence, the following order :

ORDER

- (i) In connection with C.R.No.777/2019 registered at Malvani Police Station, Mumbai, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two local sureties in the like amount.
- (ii) The Applicant shall attend the concerned police station once in a fortnight for a period of one year from today.
- (iii) The Applicant shall attend all the dates before the trial Court unless prevented by a reasonable cause.
- (iv) The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2024.05.09
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