

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1753 OF 2023

Sanu @ Shahanavaz Ayaz Ahmed Khan	...Applicant
vs.	
The State of Maharashtra	...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. Nitin Sejpal, for the Applicant.
Ms. Supriya Kak, APP, for the Respondent/State.
Mr. Parag Bhat, API, Naya Nagar police station.

CORAM : N. J. JAMADAR, J.

DATE : APRIL 18, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. The applicant, who is arraigned in C.R. No. 220 of 2016 registered with Naya Nagar police station for the offences punishable under sections 302, 201 and 404 read with 34 of Indian Penal Code, 1860, seeks to be enlarged on bail.
3. Sandip Shukla, the first informant was working as a watchman at the sewage treatment plant of Mira-Bhayandar Municipal Corporation. On 9th July, 2016 the first informant found a person lying in a motionless state with multiple injuries. It transpired that the co-accused Sohail Shaikh (accused No. 1) and his three unknown associates had assaulted Roshan Shaikh (the deceased). After the deceased was killed, his body was thrown in a naked state on the road side. The applicant and the co-accused

allegedly entered into the sewage treatment plant building along with the deceased and assaulted him by means of stick and his head was banged on a cement platform and iron racks. Ajaykumar Sonkar and Kantaprasad Sonkar, two other watchmen, had allegedly witnessed the said incident.

4. The co-accused Sohail Shaikh and Ali Shaikh were arrested and sent for trial in Session Case No. 79 of 2017. The learned Session Judge by a judgment and order dated 20th April, 2022 convicted Sohail Shaikh and Ali Shaikh for the offence punishable under section 302 read with 34 of the Penal Code and sentenced them to suffer imprisonment for life.

5. The applicant was allegedly absconding. He was arrested from his native place at Sultanpur, Uttar Pradesh on 23rd November, 2022. Post completion of investigation, supplementary charge sheet came to be lodged against the applicant.

6. Mr. Sejpai, the learned counsel for the applicant, submitted that the two star witnesses namely Ajaykumar Sonkar and Kantaprasad Sonkar have not identified the applicant in the test identification parade as one of the unknown associates of Sohail Shaikh. In the absence of such evidence of identification, no finding of guilt can be recorded against the applicant. Apart from the said evidence of eye witnesses, the prosecution banks upon the

statements of witnesses Naresh Jaigadi and Narmee Jaigadi and other residents of an abandoned building, at Mira Road who have stated that on 8th July, 2016 at about 8.30 pm after the deceased had a quarrel with one Rakesh, the applicant took away the deceased in his car.

7. Ms. Kak, learned APP stoutly resisted the prayer for bail. It was submitted that two eye witnesses have categorically stated that Sohail Shaikh (accused No. 1) and his three unknown associates had assaulted the deceased and thereafter they were asked to assist them in carrying the body of the deceased out of the sewage treatment plant. Those witnesses had ample opportunity to see the features of those known assailants. Since the test identification parade was held after eight years of the alleged occurrence, the inability to identify the applicants as one of the assailants does not detract materially from the prosecution. It was further submitted that, as the applicant made himself scarce for almost seven years, the applicant does not deserve to be released on bail.

8. I have perused the material on record. Primarily, the evidence against the applicant consists of the statements of Ajaykumar Sonkar and Kantaprasad Sonkar and the last seen theory formed by the statements of the residents of the locality where the deceased had allegedly raked up a quarrel with Rakesh and

thereafter the applicant took the deceased away in his car, on the evening preceding the occurrence.

9. Ajaykumar Sonkar and Kantaprasad Sonkar have stated that they had seen Sohail Shaikh and his associates assaulting the deceased and bringing him down from the upper floor of the sewage treatment plant. The assailants allegedly forced the witnesses to assist them in carrying the body of the deceased out of the sewage treatment plant. Those witnesses, in the circumstances of the case, may have had sufficient opportunity to notice the features of the associates of Sohail Shaikh (accused No. 1). However, it does not appear that those witnesses had furnished the description of those associates of Sohail Shaikh (accused No. 1). The inability of those witnesses to identify the applicant as one of those assailants in the test identification parade makes out a prima facie case in favour of the applicant. As the said witness had not known the applicant from before the evidence of identification assumes critical significance.

10. The second circumstance of last seen, even if the statements of the witnesses are taken at par, does not squarely incriminate the applicant. From the statements of Ajaykumar Sonkar and Kantaprasad Sonkar, it becomes prima facie evident that the deceased was last seen in the company of Sohail Shaikh (accused No. 1) and his three unknown associates. It could thus be urged that

the other persons had intervened after the deceased was last seen in the company of the applicant. Unless the prosecution succeeds in establishing that the applicant was one of those three unknown associates of Sohail Shaikh (accused No. 1), the said circumstance cannot be pressed into service qua the applicant to support the last seen theory.

11. In the aforesaid view of the matter, a case for exercise of discretion is made out. The fact that the applicant had allegedly made himself scarce, deserves to be taken into account. However, the said circumstance cannot be urged as a ground which disentitles the applicant from release on bail as the applicant was allegedly an unknown associate of Sohail Shaikh (accused No. 1). It would, therefore, be appropriate to release the applicant on bail by imposing stringent conditions.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant be released on bail in C.R. No. 220 of 2016 registered with Naya Nagar police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Naya Nagar police station on the first Monday of every month between 11 am to 1 pm

for a period of three years or till conclusion of the trial, whichever is earlier.

4] The applicant shall not leave the limits of Mumbai, Mumbai Suburbans and Thane District without prior permission of the trial Court.

5] The applicant shall not tamper with prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

6] 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.

7] The applicant shall regularly attend the proceedings before the jurisdictional Court.

8] 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.)