

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1777 OF 2023

Minu @ Sohel Farukh Shaikh ...Applicant

vs.

The State of Maharashtra ...Respondent

VISHAL
SUBHASH
PAREKAR

Digitally signed by
VISHAL SUBHASH
PAREKAR
Date: 2024.03.23
17:32:54 +0530

Mr. Shradha Sawant, for the Applicant.

Mr. Shailesh Ghag, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 21, 2024

P.C.:

1. Heard the learned counsel for the parties.

2. The applicant who is arraigned in C.R. No. 51 of 2022 registered with Mokhada police station for the offences punishable under sections 302, 201, 376(g) and 354 read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The indictment against the applicant and co-accused runs as under:

A] On 20th December 2021, a body was found floating in the waters of Vaitarna Dam. Police were informed. With the assistance of a driver, the body of a female was taken out. ADR was registered. On the basis of CDR, it was found that there were conversations between the deceased and co-accused Sikandar Shaikh (accused No. 1). Sikandar Shaikh (accused No.1) was called for questioning. During the course of interrogation, Sikandar (accused No. 1) caved

in. He was arrested.

B] Sikandar Shaikh (accused No. 1) made a discovery and pointed out the place wherefrom the deceased was thrown in the Vaitarna river by him, the applicant and co-accused Ibrahim Shaikh (accused No. 3). It further transpired that Sikandar (accused No. 1) had called the deceased to Igatpuri. She was kept in a lodge. On 19th December, 2021 at around 10.30 pm, Sikandar made the deceased board a car on the pretext of taking a ride. The applicant and the co-accused followed Sikandar and the deceased in another car. They alighted from the cars on the bridge over Vaitarna river. The accused demanded sexual favours from the deceased. As the deceased refused and retorted violently, the applicant and the co-accused allegedly caught hold of the deceased and threw her in the river. The applicant came to be arrested on 27th May 2022.

4. Ms. Shraddha Savant, the learned counsel for applicant, submitted that the applicant has been implicated on the basis of the statement of the co-accused only. There is no other material to establish the nexus between the applicant and the alleged offences. In fact, the applicant was working in the State of Rajasthan at the time of the alleged occurrence. The said fact is borne out by the evidence collected during the course of investigation. Therefore, the applicant deserves to be enlarged on bail.

5. Mr. Shailesh Ghag, learned APP, resisted the prayer for bail. It was submitted that Sikandar (accused No. 1) had recreated the occurrence and panchnama of the recreated occurrence has been recorded. In the said panchnama, the role of the applicant has been clearly depicted. The CDR also reveals the fact that the applicant was in touch with the co-accused. Having regard to the gravity of the offences, the applicant does not deserve to be enlarged on bail.

6. I have perused the report under section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. It appears that on 19th December 2021, the deceased had left her home without informing her family members. The body of the deceased was found floating in the Dam on 20th December 2021. The PM report indicates that the cause of death was drowning. The autopsy surgeon recorded that there was no evidence of pregnancy or sexual assault. There was only one abrasion over her right knee.

7. Prima facie, it appears that the deceased died on account of drowning and there were no marks of any ante mortem injury on her body. The case of the prosecution evidently rests on circumstantial evidence. The circumstances arrayed against the accused especially co-accused Sikandar appear to be CDR details, co-location with the deceased, and the discovery to show the place from where the deceased was allegedly thrown in the river.

8. Qua the applicant, prima facie, the only material appears to be the disclosure statement made by the co accused Sikandar. The panchnama of recreation of the occurrence may not command any evidentiary value as the statements therein were made in the presence of the police. It is trite that a disclosure statement made by one accused is not a substantive piece of evidence and cannot be used against non-maker co-accused. Even otherwise, the role attributed to the applicant in the disclosure statement does not seem to be distinctly related to the fact thereby discovered.

9. Ms. Sawant invited the attention of the court to a report of the investigating officer which shows that the location of the mobile phone which was being used by the applicant was at Jaipur. Indeed, that is a matter for adjudication at the trial.

10. However, prima facie, apart from the disclosure statement of the co-accused Sikandar, there does not seem to be any circumstance which unerringly points to the guilt of the applicant.

11. In the aforesaid view of the matter, especially having regard to the fact that the PM report explicitly records that there was no evidence of sexual assault, I am inclined to exercise the discretion in favour of the applicant. The apprehension on the part of the learned APP that the applicant may not be available for the trial, if released on bail, can be taken care of by imposing appropriate

conditions.

Hence the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Minu @ Sohel Farukh Shaikh be released on bail in C.R. No. 51 of 2022 registered with Mokhada police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark his presence at Mokhada police station on the first Monday of every month in between 11 am to 1 pm till conclusion of the trial.
- 4] The applicant shall not tamper with the 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.
- 5] 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.
- 6] The applicant shall regularly attend the proceedings before the jurisdictional Court.
- 7] 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.)