

Sayali Upasani

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

BAIL APPLICATION NO. 1771 OF 2023

SAYALI
DEEPAK
UPASANI

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2024.01.15
13:33:59 +0530

Mohammad Mustak Alias Motibul Rahiman Ghanai Shaikh	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Nagma Ansari, for Applicant.

Mrs. G. P. Mulekar, APP for State/Respondent.

CORAM:- N. J. JAMADAR, J.

DATED:- 11th JANUARY, 2024.

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) The applicant, who has been arraigned in CR No. 53 of 2024, registered with Nizampura Police Station, for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, seeks to be enlarged on bail.
- 3) The first informant, the applicant and Mohammad Tanvir Mustafa Shaikh, the deceased, were residing in a room at Shetchi Chawl, Mangatpada, Khonigaon, Bhivandi, Thane. The deceased was the maternal uncle of the first informant. They

were working in a power loom. On 6th March, 2014 at about 9 am, the applicant left the room without any intimation. On 7th March, 2014 at about 4 pm, the first informant went to duty in night shift. On 8th March, 2024, at about 7.30 am when the first informant returned to their room, he found that the door of the room was ajar. The deceased was lying in a motionless state. The deceased had marks of injuries on his face. A stone was found besides the body of the deceased. The first informant lodged report entertaining suspicion against Barsati Pasvan, another co-worker, as the latter had not returned home from duty on 8th March, 2014. He had also not worked in the factory on the previous night.

4) The applicant had also gone missing from the year 2014 to 2019. Suspicion was entertained against the applicant. Post arrest, the applicant made a disclosure statement pointing out the place where the applicant had allegedly killed the deceased.

5) The learned Counsel for the applicant submitted that there is no material to connect the applicant with the alleged offence. The applicant was arrested on 19th May, 2019.

6) The learned APP resisted the prayer for bail. Inviting the attention of the Court to the disclosure statement, the learned

APP submitted that the applicant does not deserve to be released on bail. The factum of abscondence for a period of five years was sought to be arrayed against the applicant.

7) I have carefully perused the allegations in the FIR and the other documents annexed to the report under Section 173 of the Code of Criminal Procedure, 1973. Evidently, it is a case of circumstantial evidence. The only circumstance sought to be arrayed against the applicant is discovery which the applicant has allegedly made. In the circumstances of the case, the said discovery prima facie does not commend any evidentiary value as the place where the deceased was allegedly killed, was within the knowledge of the investigating agency much before the alleged discovery. The said fact, thus, cannot be said to have been discovered pursuant to the statement made by the applicant.

8) As regards the conduct of abscondence it is well recognized that different persons react differently to a situation of crime. The fear of being embroiled in a case keeps persons away from the law enforcement agency. Therefore, the conduct of the applicant in making himself scarce cannot be pressed into service as a strong incriminating circumstance.

- 9) Moreover, the applicant is in custody for almost five years. The trial may take time. Hence, I am inclined to exercise the discretion in favour of the applicant.
- 10) Thus, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant Mohammad Mustak Alias Motibul Rahiman Ghanai Shaikh be released on bail in CR No. 53 of 2024, registered with Nizampura Police Station, for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.
- (iii) The applicant shall mark his presence at the concerned Police Station on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of 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 observations made hereinabove.

[N. J. JAMADAR, J.]