

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1886 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Mohammed Afzal Mohammed Shafikhan ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Shafqat Ali Shaikh, a/w Farooq Chowdhary, for the
Applicant.

Mr. Prashant Jadahv, APP for the State/Respondent No.1.
PI Sameer Ahirrao, Investigation Unit, MBVV Police
Commissioner, present.

CORAM: N. J. JAMADAR, J.
DATED: 30th APRIL, 2024

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in CR No.373 of 2021, registered with Nalasopara Police Station, for the offences punishable under Sections 302, 392 and 397 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.
3. Kishor Jain (the deceased) was the father of the first informant. The deceased was running a jewellery store under the name and style of, "Sakshi Jewellers". On 21st August, 2021 between 11.00 to 11.30 a.m. the applicant (A2) and co-

accused Johnson Baptist (A1) entered into the said store and attempted to rob the deceased of gold and silver ornaments, valuables and a mobile phone. As the deceased resisted and started to raise alarm the applicant and the co-accused tied the hands and legs of the deceased by means of cello tape and packing wire. Cloth was stuffed in the mouth of the deceased. Thereafter the applicant and co-accused allegedly assaulted the deceased by means of a hard and blunt object and also a sharp weapon. The applicant escaped with silver ornaments, bentex necklace, a mobile phone and a bunch of keys of the safe.

4. After the first informant was apprised of the incident, the first informant and her mother came to the store and shifted the deceased to Alliance Hospital. He was declared dead before admission.

5. On the basis of the CCTV footages the applicant and co-accused were arraigned as suspects. During the course of investigation John Baptist (A1) made a discovery leading to the recovery of silver ornaments, a country made pistol and two live cartridges. The applicant also made a discovery leading to recovery of the mobile phone handset of the deceased and the clothes which the applicant and the co-

accused wore at the time of the alleged occurrence. Silver ornaments weighing 149.58 grams were recovered from a witness to whom the applicant had delivered the same after the occurrence. Finding the complicity of the applicant and the co-accused, charge-sheet came to be lodged.

6. Mr. Shaikh, the learned Counsel for the applicant, submitted that the CCTV footages do not clearly reveal that the applicant was one of the two robbers. Even if the prosecution case is taken at par, there is material to indicate that the co-accused had assaulted the deceased. Moreover, the deceased had died on account of cardio-respiratory arrest due to head injury. The entire case rests on circumstantial evidence. The applicant has been in custody for more than three years. Therefore, the applicant deserves to be enlarged on bail.

7. In opposition to this, the learned APP stoutly submitted that the mobile phone of the deceased came to be recovered from the possession of the applicant, likewise the silver ornaments which were stolen from 'Sakshi Jewellers' were recovered from Meena Jaiswal, to whom the applicant had delivered the same on the occasion of *Rakshabandhan*. In addition, the applicant has been clearly seen in the CCTV

footages. The CDR reveals the location of the applicant. The Medico-Legal Examination Report of the applicant indicates that the applicant had sustained injuries in the said occurrence. Cumulatively, a very strong *prima facie* case is made out against the applicant, urged the learned APP.

8. Undoubtedly, the prosecution case primarily rests on circumstantial evidence. Nonetheless, the material on record indicates that there are circumstances which *prima facie* point to the guilt of the applicant and the co-accused. At this stage, the applicant cannot draw mileage from the fact that the Autopsy Surgeon opined that the deceased died due to cardio-respiratory arrest due to head injury. The Autopsy Surgeon had noted as many as 34 injuries on the person of the deceased. There are witnesses, who had seen the deceased tied with cello tape and packing wire in a mortally injured state. *Prima facie* an inference that the deceased met a homicidal death appears sustainable.

9. Evidently, the applicant and the co-accused were traced on the basis of the images in the CCTV footages. The prosecution has banked upon CCTV footages from various places to connect the applicant with the alleged robbery. As noted above, the applicant made a discovery leading to the

recovery of the mobile phone handset of the deceased. That *prima facie*, constitutes a very strong circumstance. The applicant led the police party to his room located at Parvati Nagar, Banganga Road, Walkeshwar, Mumbai, and took out the mobile phone handset and other articles. Recovery of the silver ornaments stolen of “Sakshi Jewellers” from Meena Jaiswal, who stated that the applicant had delivered those ornaments to her on occasion of *Rakshabandhan* further incriminates the applicant. The incriminating articles including the pistol were recovered at the instance of John Baptist (A1). The prosecution has collected material to show the CDR location of the applicant in the vicinity of the scene of occurrence at the time of the occurrence.

10. Evidently, the allegations are of a grave nature. Robbery was committed at a jewellery store in broad day light and in order to take away the stolen property, the jeweller was killed. The pre-meditation is evident from the fact that the applicant and the co-accused were carrying firearms. The number of injuries on the person of the deceased further indicates that there was intent to kill the deceased.

11. In the face of the aforesaid material, I find substance in the submission of the learned APP that a very strong *prima*

facie case is made out against the applicant. At this stage, the applicant cannot wriggle out of the situation by asserting that the disclosure statement made by the co-accused indicates that the co-accused had assaulted deceased by means of the butt of the pistol on head. *Prima facie*, the offences were committed in furtherance of common intention.

12. I am, therefore, not inclined to exercise discretion in favoure of the applicant.

13. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) The learned Additional Sessions Judge, seized with Sessions Case No.29 of 2022 arising out of CR No.373 of 2021, is requested to make an endeavour to conclude the trial as expeditiously as possible.
- (ii) 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.

[N. J. JAMADAR, J.]