

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

BAIL APPLICATION NO. 1730 OF 2023

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2024.04.05
18:44:48 +0530

Masaluddin Mohd Shahid @ Vasu ...Applicant
Versus

State of Maharashtra ...Respondent

Mr. Zoheb Shaikh, a/w Mr. Zuber Chakoli, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 3rd 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.826 of 2022 registered with Mankhurd Police Station, Thane, for the offences punishable under Sections 120B, 302, 201, 364 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 37(1)(A) read with Section 135 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.

3. On 26th September, 2022 at 9.30 am. Rahul Pawar, the Security Supervisor, found an unknown person lying in injured condition. He informed the police. The said person

was shifted to Rajawadi Hospital. He was declared dead. Chandbi Pathan (the first informant) identified the dead body to be that of her brother Imran (the deceased). She lodged report.

4. During the course of investigation, it transpired that on the previous night the co-accused Farhan, the applicant and the deceased were seen moving together on a motorcycle. Investigation further revealed that on account of previous quarrel co-accused Farhan and the applicant had killed the deceased by perpetrating assault by means of deadly weapons. Co-accused Farhan made discovery leading to the recovery of the weapons of offence and also pointed out the places where the deceased was taken and killed. The clothes which the applicant wore at the time of the alleged occurrence were also seized. As the investigation revealed the complicity of the applicant and the co-accused, charge-sheet came to be lodged.

5. Mr. Shaikh, the learned Counsel for the applicant, submitted that co-accused Farhan was the protagonist. The applicant had no motive. The applicant is sought to be roped in on the basis of the CCTV footage, which shows the applicant was the second pillion rider on the scooter driven

by the Farhan, whilst the deceased was the first pillion rider. There is no other incriminating material. It was urged that since the prosecution case rests on the circumstantial evidence, there ought to be a chain of circumstances which unerringly points to the guilt of the accused and is incompatible with the innocence of the accused. Reliance was placed on a judgment of the Supreme Court in the case of *Raja Nayar vs. State of Chhattisgarh*¹.

6. In opposition to this, Mr. Aagarkar, the learned APP, stoutly resisted the prayer for bail. It was submitted that the deceased was found in the company of the applicant and co-accused No.1 on 25th September, 2022 at about 11.30 pm. On the next morning, at about 9.30 am., the deceased was found lying with fatal injuries on his person. In addition, there are statements of witnesses which indicate that the applicant, co-accused Farhan and deceased were seen together. The co-accused made discovery leading to the recovery of weapon of the offence. The co-accused had also made an extra-judicial confession before another witness. In the circumstances, a very strong *prima facie* case is made out against the

¹Criminal Appeal 902 of 2023, dtd. 24/1/2024.

applicant and, therefore, he does not deserve to be enlarged on bail.

7. Postmortem Report indicates that there were numerous stab injuries and incised wounds on the person of the deceased on the vital parts of the body. From the perusal of the external injuries noted by the Autopsy Surgeon, *prima facie* it appears that the deceased was assaulted by means of sharp weapons relentlessly. The Autopsy Surgeon opined that the cause of death was shock and hemorrhage due to multiple stab injuries. Evidently, the deceased met a homicidal death.

8. The prosecution case rests on circumstantial evidence. The conditions which need to be satisfied before a conviction can be based on circumstantial evidence, are well recognized. The circumstances must be fully established. Those circumstances should be consistent only with the hypothesis of the guilt of the accused and should be of conclusive nature and tendency. The chain must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

9. In the case at hand, the prosecution banks upon the CCTV footage which shows that the applicant, co-accused

and the deceased were riding a Scooter at about 11.30 pm. on 25th September, 2022. Mr. Chaurasiya, who runs Sai Siddhi General Stores stated that on the night preceding the occurrence, he had seen the applicant, co-accused and the deceased when they had come to his store. As noted above, the deceased was found in fatally injured condition on the next morning. Co-accused Farhan made discovery leading to, *inter alia*, the weapon of assault. Maaj Khan stated that on 26th September, 2022 the co-accused told him that he was in need of money as he and his friend had killed the deceased. He claimed to have received a voice message from co-accused. However, out of fear, after hearing the message, he had deleted the said chat.

10. Mr. Zoyeb Shaikh made an endeavour to urge that apart from the CCTV footage and the disclosure statement of the co-accused, there is no material to establish the nexus between the applicant and alleged offences. A strenuous endeavour was made to demonstrate as to how the recovery of weapons cannot be linked with the assault allegedly perpetrated on the deceased.

11. In the peculiar facts of the case, in my view, the circumstance of last scene captured in the CCTV footage, has

a definite incriminating tendency. At this stage, the said circumstance finds support in the statement of Mr. Chaurasiya. Mr. Maaj Khan states that co-accused Farhan had made an extra-judicial confession before him. In the disclosure statement as well as the alleged extra-judicial confession, the reference to the applicant finds mention. In the facts and circumstances of the case, the interval of time between deceased having been seen in the company of the applicant and co-accused and his dead body being found, cannot be said to be too long. Cumulatively, the circumstances make out a strong *prima facie* case.

12. In the aforesaid view of the matter, I am not persuaded to accede to the submission on behalf of the applicant that there is no material to establish the nexus between the applicant and the alleged offences. Therefore, I am impelled to reject the application.

13. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (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.]