



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2126 OF 2023**

Rehan Bashir Shaikh @ Rehan Bashir
Mohammed

... Applicant

versus

The State of Maharashtra and Anr.

... Respondents

Mr. Anurag Ghag, through VC, for Applicant.

Mrs. Geeta P Mulekar, APP for Respondents

CORAM: N.J.JAMADAR, J.

DATE : 23 JANUARY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. The applicant who is arraigned in Sessions Case No.44 of 2022 arising out of C.R.No.478 of 2021 registered with Manpada Police Station, Dombivali, for the offences punishable under Sections 120B, 326, 302, 397, 201, 188 of Indian Penal Code, Section 4 read with Section 25 of the Arms Act, and Sections 37(1) read with Section 135 of the Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.
3. On 11 September 2021, while Balasaheb Hore, Traffic Police Naik, was regulating the traffic at Tata Naka, he was informed that a person was lying in an injured state on the road leading to Khambalpada in front of Krishna enterprises. The first informant visited the said spot and found that Krishna Mohan Tiwari (deceased)

was lying thereat in an injured state. There was an injury on the back of the head. The deceased was shifted to hospital. However, he succumbed to the injuries. FIR was thus lodged against unknown person.

4. During the course of investigation, it transpired that the applicant, co-accused Sagar and Sumit and a child in conflict with law, were friends. The Applicant was working at Job Street Recruitment, Diva, Thane. He used to contact persons who were aspiring for the jobs. By misusing the cellphone number in the name of Nasrin Ansari.

5. On 11 September 2021 at about 11.30 a.m., the deceased was called by sending a message from the cellphone number of Ansari. In pursuance of a criminal conspiracy, accused No.2 Sagar and accused No.3 Sumit made the deceased to board a rikshaw. Later on, the applicant and the child in conflict with law also boarded the said rikshaw masquerading as passengers. The deceased was taken to a secluded place and an attempt was made to rob him of the bag and mobile phone handset. When the deceased resisted, the applicant allegedly assaulted the deceased by means of a chopper. As the deceased lost consciousness, he was thrown out of the rikshaw on the roadside. The applicant had allegedly sold the mobile phone handset of the deceased to Bhaurao Gaikwad. The applicant and the co-accused also tried to destroy the evidence.

6. Learned Counsel for the Applicant submitted that the applicant has been

roped in on the basis of suspicion. Co-accused Sagar was granted bail by this Court by an order dated 23 June 2023. There is not much difference in the role attributed to the applicant and the co-accused, who has been released on bail as the offences were allegedly committed in pursuance of a criminal conspiracy.

7. Learned APP resisted the prayer for bail. It was submitted that in the house search of the applicant a notebook was found in which the name of the deceased along with telephone number was found mentioned. Likewise, the mobile phone handset of the deceased, which was sold by the applicant was recovered from Bhaurao Gaikwad. These two circumstances, according to the learned APP, clearly incriminate the applicant.

8. I find it difficult to accede to the submission of the learned APP unreservedly at this stage. Evidently, the case is based on circumstantial evidence. The prosecution does not allege that any person had witnessed the occurrence. The alleged recovery of the diary containing the name and number of the deceased and the mobile phone handset are required to be considered in the light of the fact that the prosecution claimed that on the day of occurrence at about 7.10 p.m, panchanama of the scene of occurrence was drawn and an iron chopper and rod were found lying at the scene of the occurrence.

9. In the circumstances, recovery of the mobile phone handset purportedly belonging to the deceased, prima facie, does not seem to have such incriminating

tendency as to inexorably lead to the authorship of the assault. Whether these circumstances pressed into service against the applicant, are sufficient in themselves to sustain the guilt of the applicant would be a matter for adjudication at the trial.

10. The applicant has been in custody since 15 September 2021. It is unlikely that the trial can be completed in a reasonable period. Co-accused have been released on bail. I am, therefore, impelled to exercise the discretion in favour of the applicant.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant – Rehan Bashir Shaikh @ Rehan Bashir Mohammed be released on bail in C.R.No.478 of 2021 registered with Manpada Police Station, Dombivali, on furnishing a PR bond in the sum of Rs.30,000/- and one or two sureties in the like amount to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence before Manpada Police Station on first Monday of every month in between 11 am to 1 pm for a period of two years or till the conclusion of the trial.

(iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing

the facts to Court or any police officer.

(v) On being released on bail, 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.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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.)