

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.3087 OF 2023**

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PAREKAR

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VISHAL SUBHASH  
PAREKAR  
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Mohammed Jalil @ Imran

Mohd Kalim Shaikh

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Rakesh Singh, for the Applicant.

Mr. S.R Agarkar, APP, for the Respondent/State.

**CORAM : N. J. JAMADAR, J.**

**DATE : MARCH 26, 2024**

**P.C.:**

1. Heard the learned counsel for the parties.
2. The applicant who is arraigned in C.R. No.175 of 2021 registered with Bandra-Kurla Complex police station for the offences punishable under sections 302 and 201 of Indian Penal Code, 1860 and section 37 read with 135 of Maharashtra Police Act, 1951 seeks to be enlarged on bail.
3. On 11<sup>th</sup> May, 2021 Rohit Gupta noticed that behind a tin shade at MTNL to Rajjaq Junction, BKC, one lady was lying in a half-naked state. Police arrived at the scene of occurrence. It was noticed that there was an injury on the neck.
4. It transpired that the deceased was a sex worker. She was in a relationship with the applicant. Witnesses had seen the deceased visit S.G.Barve, Kurla Night School where the applicant was working as watchman. The applicant came to be arrested.

5. During the course of investigation, it further transpired that on the night of occurrence at about 11 pm the applicant had ran away towards the store at the construction site of J.Kumar at MTNL junction. Few persons had chased him as they suspected him to be a thief. The applicant and the deceased were seen in the CCTV footage near Pratham Trade Center. The applicant also allegedly made disclosure leading to recovery of the scarf and blood stained clothes which he was wearing at the time of occurrence and the weapon of offence i.e. knife.

6. Mr. Singh, learned counsel for the applicant, submitted that the applicant has been implicated on the basis of suspicion. There is no eye witness to the alleged occurrence. The circumstantial evidence sought to be pressed into service against the applicant does not appear to be of incriminating tendency. In the circumstances, the applicant deserves to be enlarged on bail.

7. As against this, Mr. Agarkar, learned APP for the State, submitted that there is overwhelming evidence to show the complicity of the applicant. Laying emphasis on the statement of Rajesh Pawar who had allegedly slapped the applicant suspecting him to be a thief, Mr. Agarkar submitted that the applicant was found running away after committing the murder of the deceased in suspicious circumstances. Secondly, the applicant made the

disclosure leading to recovery of scarf and the blood stained clothes which he was wearing as well as the weapon of offence. In addition, there are statements of witnesses who have identified the applicant as the person who was seen with the deceased in the CCTV footage at 22.05 pm on 10<sup>th</sup> May, 2021. Cumulatively the circumstances squarely incriminate the applicant, submitted Mr. Agarkar.

8. I have carefully perused the report under section 173 of the Code and the material on record.

9. Evidently, the prosecution case rests on circumstantial evidence. There is no witness to the alleged occurrence. Prima facie, the postmortem report indicates that there were multiple stab and incised wounds on the body of the deceased and the cause of death was hemorrhagic shock due to cut throat injury. The deceased seems to have met a homicidal death.

10. The prosecution proposes to establish the authorship of the homicidal death by pressing into service three circumstances. One, the applicant was seen running away wearing a mask on the night of 10<sup>th</sup> May, 2021. The witnesses who had seen the applicant have identified the applicant in the test identification parade. Second, there are statements of witnesses which show that the deceased used to visit the place where the applicant worked, occasionally, and in the CCTV footage, the applicant was seen along with the

deceased on 10<sup>th</sup> May, 20214 at about 22.00 pm. Thirdly, the applicant has made disclosure leading to the recovery of the weapon of offence and the blood stained clothes.

11. It is trite, to sustain a conviction on the basis of circumstantial evidence, the circumstances must be proved, they ought to have conclusive incriminating tendency and the chain of circumstances should be complete and unerringly point to the guilt of the accused and those circumstances should not be compatible with the innocence of the accused.

12. In the case at hand, the first circumstance of the applicant having been seen running away, wearing a mask, in itself, does not prima facie appear to have an incriminating tendency. To what extent the identification of the applicant during the test identification parade by Rajesh Pawar and Anil Pawar would advance the cause of the prosecution appears to be a matter for adjudication at the trial as the witnesses have stated that the person whom they had chased and slapped was wearing a mask. Whether those witnesses have had adequate opportunity to notice the features of the person whom they had chased and slapped so as to facilitate his identification at a later point of time, prima facie, appears debatable.

13. The second circumstance of the deceased having been found

visiting the applicant by itself, prima facie, does not have any incriminating tendency. The fact that the applicant was seen in the CCTV footage along with the deceased on 10<sup>th</sup> May, 2021 may have some incriminating tendency. Even if the Court proceeds on the premise that the said fact is in the nature of last seen evidence, the time lag between such last seen and the death of the deceased assumes significance. If the interval of time is long, the possibility of other circumstances intervening in the interregnum cannot be ruled out.

14. The third circumstance of discovery leading to the recovery of the blood stained clothes and the knife may have a definitive incriminating tendency. However, whether the conviction can be based on the evidence of discovery, would be a matter for adjudication at the trial.

15. In the backdrop of the aforesaid nature of the circumstances pressed into service against the applicant, a prima facie case for exercise of discretion can be said to have been made out.

16. It is also necessary to note that the applicant has been in custody since 16<sup>th</sup> May, 2021. The prosecution proposes to examine as many as 48 witnesses. In the light of the nature of accusation and the evidence which the prosecution may be required to adduce, even if the prosecution does not examine all the witnesses, it

appears extremely unlikely that the trial can be concluded within a reasonable period. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

**ORDER**

- 1] The application stands allowed.
- 2] The applicant Mohammed Jalil @ Imran Mohd Kalim Shaikh be released on bail in C.R. No.175 of 2021 registered with Bandra-Kurla Complex 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 Bandra Kurla Complex police station on the first Monday of every month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 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.)**