

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3315 OF 2023**

Shahida Raees Shaikh ... Applicant
versus
The State of Maharashtra and Anr. ... Respondents

Mr. Bablu J. Shaikh with Mr. Ved Prakash Chaudhari, Mr. Omprakash Parihar, for Applicant.

Mr. S.R.Aagarkar, APP for State.

PSI Shivaji L. Chakane, Dahisar Police Station present.

CORAM: N.J.JAMADAR, J.

DATE : 27 MARCH 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for bail in Sessions Case No.84 of 2022 arising out of C.R.No.760 of 2021 registered with Dahisar Police Station for the offences punishable under Sections 120B, 302, 201, 177 read with Section 34 of the Indian Penal Code.
3. Raees (the deceased) was the brother of Anish Shaikh, first informant. The applicant is the wife of the deceased. The deceased was residing at Ekta Nagar, Dahisar (E), Mumbai along with the applicant, son and daughter. The deceased went missing from 20 May 2021. The first informant who was at their native place, Rampur Kharata, Gond U.P., made a number of calls to the deceased, but he could not be reached. Azhar Shaikh and Aadil Shaikh, the friends of the deceased also made calls

to the deceased which were picked up by the applicant. When they inquired about the deceased, the applicant feigned ignorance about his whereabouts. Eventually, the first informant came to Mumbai and stayed in the house of his brother. On the morning of 31 May 2021, while offering prayer, the first informant noticed that floor of the kitchen room was uneven. Electrical bulb and tube of the said room was removed. On the next day, the first informant inspected the kitchen again and noticed that a portion of the flooring was newly laid. The first informant entertained suspicion and called the police. The police removed the newly laid floor and disinterred the body of the deceased.

4. During the course of investigation, it transpired that the applicant was in a relationship outside the marriage with Amit @ Ankiet Vishwakarma (A2) and in pursuance of the criminal conspiracy, the deceased was killed and buried in the kitchen. Statement of 7 year old daughter of the deceased came to be recorded. She stated that the applicant and co-accused had killed the deceased and he was buried in the kitchen. Investigation further revealed that the co-accused had purchased the floor and cement from Qureshi Lime Depot on 20 May 2021 and the debris which was removed from the kitchen room of the applicant was given to a witness for disposal.

5. Learned Counsel for the applicant made an endeavour to urge that, at best, an offence under Section 201 of the IPC can be said to have been made out against the applicant. There is no evidence to indicate that the applicant had killed the

deceased. Apart from the statement of 7 year old daughter of the applicant, which is inherently of a weak character, the entire prosecution case rests on circumstantial evidence. The applicant has been in custody since 2 June 2021. Therefore, having regard to the nature of the accusation, evidence which the prosecution proposes to lead and the period of incarceration of the applicant, she deserves to be enlarged on bail.

7. Mr. Aagarkar, learned APP stoutly resisted the prayer for bail. It was submitted that there is overwhelming evidence to show the complicity of the applicant. Apart from the statement of the child witness, there are circumstances which unerringly point to the guilt of the applicant. Attention of the Court was invited to the conversation which the applicant had with the first informant, and the two friends of the deceased. The applicant had made efforts to mislead the first informant and the friends of the deceased and even falsely claimed that she had lodged a report that the deceased was missing.

8. I find substance in the submissions of the learned APP. There are statements of witnesses which indicate that the applicant was in a relationship outside marriage with accused No.2. The daughter of the applicant also adverts to the said relationship and the quarrel which had ensued when the deceased had seen the co-accused along with the applicant, in his house. The fact that the body of the deceased was found in the kitchen of the house which the applicant and deceased shared, is a

very strong incriminating circumstance.

9. To add to this, the statements of the witnesses namely the first informant, Azhar Shaikh and Aadil Shaikh do indicate that the applicant had made an endeavour to mislead them. The conduct of the applicant in not reporting the matter to the police, though the deceased had gone missing for five days, and when insisted by the first informant that she must lodge a report, in falsely claiming that she had lodged such report, also prima facie incriminates the applicant. A perusal of the transcript of the telephonic conversations between the applicant and Azhar and Aadil also prima facie indicates that the applicant attempted to side step the issue and misled the persons who were inquiring about the deceased.

10. Prima facie, there is overwhelming evidence against the applicant. Since the daughter of the applicant is a prime witness, the apprehension on the part of the prosecution that, if released on bail, there is a strong possibility of tampering with the evidence and threatening the witnesses, cannot be said to be unfounded.

11. In the totality of the circumstances, this is not a fit case where the Court can exercise discretion to release the applicant on bail.

12. Hence, the following order :

ORDER

- (i) The 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.)