

Sayali Upasani

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

**BAIL APPLICATION NO.- 3526 OF 2023
WITH
INTERIM APPLICATION NO.747 OF 2024**

Mohammad Sahim Mohammad Farid ... Applicant
Shaikh

**SAYALI
DEEPAK
UPASANI**

Vs.
The State of Maharashtra ...Respondent

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SAYALI DEEPAK
UPASANI
Date: 2024.03.20
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Mr. Vinay Kumar Khatu with Devisingh Deora with Sneha
Thakare, for Applicant.

Ms. Ranjana D. Humane, APP for State-Respondent

Mr. R. N. H. Jabali, for Intervener.

Mr. Garud, PI and Ms. Kadam, API, Trombay Police Station.

CORAM:- N. J. JAMADAR, J.

DATED:- 18th MARCH, 2024

ORDER:-

1) The applicant, who has been arraigned in CR No. 126 of 2023 registered with Trombay Police Station, for the offences punishable under Sections 302, 307, 326, 323 and 504 of the Indian Penal Code, 1860 ("the Penal Code"), Sections 37 (1)(A),

read with Section 135 of Maharashtra Police Act, 1951, has preferred this application to enlarge him on bail.

2) Rafiq (the deceased) was the brother of Bashir Momin Noor Islam Momin, the first informant. The deceased was in a relationship outside marriage with the wife of the applicant. On 26th February, 2023, the first informant was apprised by his sister-in-law Shabina that the applicant raked up a quarrel with the deceased over the said relationship of the wife of the applicant with the deceased and assaulted him by means of a sharp weapon. The first informant went to the scene of occurrence and shifted the deceased to Shatabdi Hospital. The first informant lodged a report for the offences punishable under Sections 326, 323 and 504 of the Indian Penal Code, 1860. Eventually, the deceased succumbed to the injuries.

3) Mr. Khatu, the learned Counsel for the applicant submitted that in the death card issued by Sion Hospital, the cause of death was shown as 'not known'. Secondly, there is no evidence to indicate that the applicant had assaulted the deceased. The prosecution, according to the learned Counsel for the applicant, banks upon the statements of two minor witnesses. Their statements do not bear the weight of accusation against the applicant, urged the learned Counsel for the applicant.

4) Ms. Ranjana D. Humane, the learned APP, countered the submissions on behalf of the applicant. It was submitted that there is overwhelming evidence to indicate that the applicant had perpetrated murderous assault on the deceased. In addition to the statement of two minor witnesses, there is a statement of Shabina, the sister-in-law of the deceased, which clearly implicates the applicant. It was further submitted that circumstantial evidence in the form of the recovery of the weapon of offence pursuant to the disclosure made by the applicant, also incriminates the applicant. In these circumstances, as the applicant had committed the murder of the deceased in a broad daylight at a public place, the applicant does not deserve to be enlarged on bail, urged Ms. Humane.

5) The controversy sought to be raised as regards the homicidal nature of the death of the deceased by relying upon the intimation of death does not merit acceptance. PM report clearly records that the deceased died due to HAEMORRHAGIC SHOCK FOLLOWING STAB INJURY TO ABDOMEN (UNNATURAL). The autopsy surgeon had, inter alia, noted a stab injury of length 5.5 cm on left iliac region, 12 cm from midline, the injury penetrated the underlying subcutaneous tissue, muscle and entered the abdominal cavity producing stab over peritoneum and cut on

body of 3rd lumbar vertebrae. Another incised injury of length 8 cm over dorsum of lower 1/3rd part of left arm, 5 cm above elbow was noted. Prima facie, there is adequate material to show that the deceased met with a homicidal death.

6) It is rather difficult to accede to the submission on behalf of the applicant that there is no prima facie material to show that the applicant was the assailant. The statements of two minor witnesses clearly indicate that the applicant raked up the quarrel and, thereafter, took out a knife from the pocket and unleashed blows on the stomach and left biceps of the deceased. The criticism sought to be advanced on behalf of the applicant that the prosecution has recorded statements of child witnesses to shore up its case, deserves to be appreciated in the light of the fact that the witnesses appear to be 15 to 16 years of age.

7) I find substance in the submission of Ms. Humane that the statement of Shabina, prima facie, incriminates the applicant. She claims to have reached the scene of occurrence as persons had gathered thereat and noticed the assault perpetrated by the applicant.

8) Pursuant to the discovery made by the applicant, the weapon of offence i.e. knife came to be recovered under the

seizure memo. Thus, there is a very strong prima facie case against the applicant.

9) In the aforesaid backdrop, the apprehension on the part of the prosecution of tampering with evidence and threatening the witness cannot be said to be unfounded. Resultantly, I am not inclined to exercise the discretion in favour fo the applicant.

10) Hence, the following order.

: O R D E R :

(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 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.

(iii) In view of rejection of the Bail Application, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]