

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 71 OF 2024

Ali Husain Farchand Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Shantanu Phanse i/b Ilsa S. Shaikh, for the Applicant.
- Mr. Sagar Ramchandra Agarkar, APP for State.
- Mr. P.P. Chavan, PSI, Mumbra Police Station.

CORAM : MANISH PITALE, J.

DATE : 10th JUNE, 2024.

P. C. :

1. Heard learned counsel for the applicant and the learned APP.
2. The applicant in the present case is seeking bail in the context of offences registered against him and accused No.1 under Sections 302, 201 read with 34 of the Indian Penal Code. The incident in the present case is said to have been taken place on 24th October, 2022 and the First Information Report (FIR) was registered on 25th October, 2022 at Mumbra Police Station, against the two accused persons, including the applicant before this Court.
3. The applicant was arrested on 01st November, 2022 and the charge-sheet in the present case was filed on 28th September, 2023.
4. According to the learned counsel for the applicant, even if the

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contents of the charge-sheet and the documents filed therewith are to be taken into consideration, the identity of the applicant as one of the persons involved in the incident is not established. It is submitted that the present case is a case of circumstantial evidence, as admittedly there is no eye witness to the alleged incident. It is submitted that the statements of witnesses recorded during the course of investigation show that none of the witnesses have specifically named the applicant as being the person associated with accused No.1 and that in the test identification parade, the applicant was not identified by one of the alleged witnesses. On this basis, it is submitted that this Court may consider enlarging the applicant on bail.

5. On the other hand, the learned APP submits that in the present case there is recovery of the weapon of assault i.e. knife and that the clothes of the applicant along with accused No.1 have been recovered. It is further submitted by the learned APP that in the present case the applicant is a resident of Uttar Pradesh and it was after efforts made by the police that the applicant was eventually arrested on 01st November, 2022 from Uttar Pradesh. In this backdrop, it is submitted that if the applicant is enlarged on bail, there is every possibility of the applicant absconding and thereby delaying the trial in the present case. It is further submitted that in any case, if at all this Court is inclined to favourably consider the present application, it ought to be made clear that the same shall not inure to the benefit of accused No.1.

6. The rival submissions have been appreciated in the backdrop of the material available on record. The allegation against the accused persons is that they are involved in the murder of the deceased, who was the husband of the informant. It is alleged that the accused No.1 suspected the deceased of having stolen his mobile phone and in that context, under the pretext of giving party to the deceased person as his missing mobile phone was found, the accused persons took the deceased behind a water tank and caused his death. The body was recovered from bushes behind the water tank.

7. The informant in her statement, which led to registration of the FIR, did name the accused No.1 as having accompanied the deceased and that subsequently the accused No.1 was seen with an unknown person coming from the area where the dead body of the deceased was eventually found. A statement of another witness Hussain @ Noor Munnawar Shaikh is brought to the notice of this Court. The said witness has also stated that he saw the accused No.1 along with an unknown person coming from the area where the dead body of the deceased was eventually found. It is relevant to note here that neither the informant nor the said witness have named the applicant as the person who was accompanying accused No.1. It is also relevant to note here that while the informant in her statement, which led to the registration FIR, stated that the unknown person accompanying the accused was wearing

only jeans pant, the aforesaid witness Hussain @ Noor Munnawar Shaikh stated that the unknown person was wearing white shirt and underwear. *Prima facie* there appears to be variance in the two statements.

8. Apart from this, the test identification report placed on record shows that the aforesaid witness Hussain @ Noor Munnawar Shaikh failed to identify the accused No.2 i.e. the applicant before this Court.

9. The aforesaid material brought to the notice of this Court does indicate that at this stage there is slender material to connect the applicant with the incident, in the sense that the material *prima facie* doesn't indicate that the unknown person accompanying the accused No.1 was indeed the applicant before this Court. Therefore, the applicant has made out a case for grant of bail.

10. As regards apprehension expressed by the learned APP that the applicant being a resident of Uttar Pradesh, from where he was arrested, there is every possibility of the applicant absconding, appropriate conditions can be imposed, while allowing the present application.

11. This Court has taken note of the fact that the applicant has been behind bars since 01st November, 2022.

12. In view of the above, the application is allowed in the following

terms.

- (A) The applicant shall be released on bail in connection with FIR No. 0994 of 2022, registered at Police Station Mumbra, District Thane City on furnishing PR bond of Rs.50,000/- and one or two sureties in the like amount to the satisfaction of the Trial Court.
- (B) The applicant shall not leave the jurisdiction of police station Mumbra, during the course of the trial. He shall cooperate with the Trial Court and attend the proceedings regularly.
- (C) The applicant shall report to police station Mumbra on every 2nd and 4th Monday of the month between 10.00 a.m. to 12.00 noon, during the pendency of the trial.
- (D) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.
- (E) The applicant shall upon release immediately inform the Investigating Officer of his Contact number and residential address and update the same in case of any change.

13. Needless to say, in case of violation of any of the aforesaid conditions, the bail granted to the applicant shall be liable to be cancelled. It

is made clear that the present order has been passed in the context of the applicant and appreciation of the material available on record in that context, which shall not inure to the benefit of accused No.1, who will have to make out his own case on merits for grant of any relief of such kind.

14. It is further made clear that the observations made in this order are limited to the question of grant of bail to the applicant and that the Trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

15. The application is disposed of.

(MANISH PITALE, J.)