

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 84 OF 2024**

Mohammad Faiz Ali Kadar Khan	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Ms. Misbaah Solkar a/w. Mr. Mohd. Taha for applicant.

Mr. Kiran C. Shinde, APP for respondent-State.

Mr. Rajaram Bagwe, PSI, Pantnagar Police Station, Mumbai.

**CORAM : MANISH PITALE, J.
DATE : 26th NOVEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is seeking bail as he was arrested on 06.09.2020 in connection with FIR No.559 of 2020 dated 06.09.2020, registered at Pantnagar Police Station, Mumbai, initially for offences under Sections 394 read with Section 34 of the Indian Penal Code, 1860 (IPC). Upon completion of investigation and filing of charge-sheet, offences under Sections 302, 394 and 411 and Sections 3(1)(i), 3(2), 3(4) and 3(5) of Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) were added against the applicant, alongwith the co-accused persons. Accused No.1 is claimed to be the gangleader. The applicant is accused No.3.

3. The informant in the present case is a police personnel, who was witness to the incident dated 06.09.2020 where the co-accused Nos.1 and 2,

while riding a motorcycle, pulled the *mangalsutra* of the victim, due to which she suffered injuries and eventually succumbed. The allegation against the applicant is that he had common intention with the co-accused persons in committing the said offence as he was constantly in touch with co-accused Nos.1 and 2.

4. At the outset, the learned counsel for the applicant relies upon order dated 14.11.2022 passed by this Court (Coram: Bharati Dangre, J) in Bail Application No.1599 of 2021 (Shakir Khwaja Peer Sayyed vs. The State of Maharashtra), granting bail to co-accused No.5. Reliance is also placed on the order dated 04.12.2023 passed by this Court (Coram: M. S. Karnik, J) in Bail Application No.276 of 2023 (Mohammed Hameed Mohd. Yusuf Shaikh vs. State of Maharashtra), whereby bail was granted to co-accused No.4. The learned counsel for the applicant submits that the applicant herein, who is accused No.3, deserves to be granted bail on the principle of parity. It is submitted that the role attributed to co-accused Nos.4 and 5 is identical to the role alleged against the applicant-accused No.3 and therefore, the present application deserves to be granted.

5. The learned APP submits that the material on record indeed shows the manner in which the applicant was constantly in touch with co-accused Nos.1 and 2, who actually committed the act which resulted in death of the victim. It is submitted that there is sufficient material to show involvement of the applicant and therefore, the present application does not deserve consideration.

6. A perusal of the order passed in favour of co-accused No.5 i.e. Shakir Khwaja Peer Sayyed vs. The State of Maharashtra (*supra*), would show that

the role attributed to the applicant therein, can be said to be similar to the role alleged against the applicant in this application. Even according to the investigating authority, neither the applicant herein, nor the co-accused Nos.4 and 5 were present at the spot of the incident. The allegation against the applicant herein and the said co-accused Nos.4 and 5 appears to be that they were in touch with co-accused Nos.1 and 2 and that all the accused together, with common intention, had undertaken the acts which resulted in the aforesaid offences being registered against them. After taking into consideration the material filed alongwith the charge-sheet, in the order passed in favour of co-accused No.5, this Court had observed as follows:

- “8. When the entire charge-sheet is scanned, except the CDR of the mobile phone without the actual conversation being revealed, there is no material to establish the conspiracy hatched to commit the offence of robbery and murder. From the investigation, it can be seen that the death of the deceased was accidental and in an attempt to snatch the chain, she was dragged, sustained injuries and succumbed to the same. Even assuming for a moment that there was a conspiracy to rob her of the neck piece, it cannot be said that there was a conspiracy to commit her murder.
9. When the entire charge-sheet is perused, including the confessional statement of accused Nos.2 and 3, the present applicant is attributed a role of receiving the stolen property, which would at the most, invite his conviction under Section 411 of IPC. The conspiracy to commit murder being not brought on record, prima facie, the applicant cannot be said to be guilty of the offence of committing murder of deceased. In any case, the prosecution will have to establish its case beyond reasonable doubt by bringing cogent and reliable evidence on record.”

7. The above-quoted reasoning would apply with equal force to the case of the applicant in the present application also and there is substance in the

contention raised on behalf of the applicant that the principle of parity must apply and that the application deserves to be enlarged on bail.

8. It is relevant to note that in the said order passed in favour of co-accused No.4, this Court had further given reasons as to why offences under the MCOC Act were not *prima facie* made out against the applicant therein. In the present case, it is significant to note that there is no criminal antecedent of the applicant and this is the only FIR registered against him in which he is shown as an accused with the purported gangleader i.e. accused No.1.

9. Considering the aforesaid material and applying the principle of parity, since co-accused Nos.4 and 5 have been enlarged on bail, this Court is of the opinion that the present application also deserves to be allowed.

10. Accordingly, the application is allowed in the following terms:

- (i) The applicant shall be released on bail in connection with FIR No.559 of 2020 dated 06.09.2020, registered at Pantnagar Police Station, Mumbai, on furnishing P. R. Bond of ₹ 30,000/- with one or two sureties in the like amount.
- (ii) The applicant shall mark his attendance before the concerned police station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m. till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.
- (iii) 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. The applicant shall not tamper with evidence.

(iv) 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.

11. The applicant shall be liable to face proceedings for cancellation of bail, in the event any of the aforesaid conditions are violated.

12. It is also clarified that the observations made in this order are limited to the disposal of the present bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

13. The application is disposed of.

(MANISH PITALE, J)

Priya Kambli