

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 139 OF 2024

Mohammed Yasin Mohammed Hanif ... Applicant.
Shaikh

V/s.

The State of Maharashtra ... Respondent.

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Shri Rahul Arote, Advocate for Applicant

Ms Veera Shinde, APP for the State.

CORAM : ANIL S. KILOR, J.

DATE : 24TH JUNE, 2024.

PC:

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No.278 of 2021, registered with Police Station, Vasai, Meera Bhainder Vasai-Virar Police for the offences punishable under Sections 302 and 201 of the Indian Penal Code.
3. The whole case is based on circumstantial evidence. It is the case of the prosecution that the body of the deceased was found on 26/07/2021 in a bag, whereas the missing report was lodged

by the relatives of the deceased on 24/07/2021. The accused No.1 is the husband of the deceased. Whereas, the accused Nos. 2 and 4 are the brother-in-laws and accused No.3 is father-in-law of the deceased.

4. The present applicant is accused No.4 who is brother-in-law of the deceased.
5. The statement of co-accused Mohammed Yusuf Mohammed Hussain recorded under Section 164(5) of the Code of Criminal Procedure does not *prima facie* establish or show that the applicant has committed the alleged offence. If the said narration is taken on its face value, at the most the allegation against the applicant would be of destroying the evidence.
6. Furthermore, the prosecution is trying to connect the applicant on the basis of the CDR which shows that the last call was made by the accused No.1 to him. However, in absence of any *prima facie* evidence to show that he was involved in committing the murder of the deceased, the prayer of the applicant for grant of bail cannot be denied.
7. Though the learned APP pointed out the circumstances to justify the applicability of Section 34 of the Indian Penal Code against the applicant, however, except the above referred circumstances, there is nothing to *prima-facie* show the direct involvement of the applicant in committing the murder.

8. In the circumstances, if the offence, which was attracted for the allegation of destroying the evidence and maximum punishment for the said offence is considered, coupled with the period of incarceration of the applicant, who is in jail from 17/09/2022, I am of the opinion that the applicant is entitled for grant of bail.

9. In the circumstances, I pass the following order:

- i) The Criminal Application is allowed.
- ii) It is directed that the applicant shall be released on bail in connection with Crime No.278 of 2021, registered with Police Station, Vasai, Meera Bhainder Vasai-Virar Police for the offences punishable under Sections 302 and 201 of the Indian Penal Code, on furnishing P.R.Bond in the sum of Rupees Twenty Five Thousand with one solvent surety in the like amount;
- iii) The applicant shall attend the concerned Police Station on 1st and 16th day of each month between 12:00 noon and 2:00 pm, till conclusion of the trial;
- iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- v) Liberty is granted to the State to apply for cancellation of bail if the applicant commits similar offence.

- vi) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

The Criminal Application is **disposed of** accordingly.

(ANIL S. KILOR, J)