

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

BAIL APPLICATION NO. 980 OF 2024

Shanawaz Yusuf Ansari

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Mohd. Saeed Moghal a/w Ms. Deepa Panickar and A. Shaikh, for Applicant.
- Mr. Sagar R. Agarkar, APP for Respondent.

CORAM : MANISH PITALE, J.

DATE : 11th OCTOBER, 2024.

P. C. :

1. Heard Mr. Moghal, learned counsel for the applicant and Mr. Agarkar, learned APP for the respondent-State.

2. At the outset, learned counsel for the applicant submits that there is a typographical error in the application, as the name of the applicant is shown as “Mrs. Shanawaz Yusuf Ansari”, while the correct name is “Mr. Shanawaz Yunus Ansari.” He submits that leave may be granted to amend the application to correctly record the name of the applicant.

3. In the interest of justice, leave is granted to carry out the amendment forthwith.

4. The applicant was arrested on 30.05.2020 in connection with First Information Report No.357 of 2020, dated 29.05.2020, registered at

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Police Station Rabodi, District Thane City, for offence under Section 302 of the Indian Penal Code, 1860 (IPC). Subsequently, offence under Section 404 of the IPC was also added.

5. The FIR in the present case was registered on the basis of a statement given by the brother of the deceased. She was the stepmother of the applicant. The informant stated that on 28.05.2020, the deceased i.e. his sister left her house at about 07:00 p.m. in the evening and thereafter, she did not return. On the next day on 29.05.2020, her body was found on a footpath. She was found to have suffered injuries inflicted by a sharp weapon. On 30.05.2020, the supplementary statement of the informant was recorded, wherein he stated that the husband of the deceased informed the informant that certain jewellery belonging to the deceased had also gone missing.

6. The police initiated investigation. The papers show that a CCTV footage panchanama was executed on 30.05.2020, wherein the informant identified the applicant, as the person driving an auto rickshaw in which the deceased was traveling. Thereafter, at about 10:00 p.m. on 30.05.2020 the applicant was arrested. His memorandum panchnama under Section 27 of the Evidence Act was recorded in the afternoon on 01.06.2020, which led to recovery of the auto rickshaw as well as a blood stained knife from the torn seat on the backside of the rickshaw. The applicant also led the police team to

a particular room where jewellery belonging to the deceased was allegedly recovered, which was also said to be stained with blood. The statements of witnesses were recorded, which included a chance witness whose statement was recorded on 02.06.2020. He claimed to have seen the applicant driving the said auto rickshaw at about 08:00 p.m. on 28.05.2020, wherein the deceased was sitting as a passenger. The blood stained jewellery, blood stained clothes of the applicant as well as the deceased and the blood stained knife were all sent for forensic analysis.

7. The applicant has remained incarcerated from 30.05.2020 in connection with the said offences.

8. learned counsel for the applicant submitted that this is a case of circumstantial evidence and the material relied upon by the investigating authority does not show the chain of circumstances, leading to the involvement of the applicant in the incident in question. It is submitted that there are glaring missing links and that the forensic report does not support the hypothesis of the investigating authority. It is submitted that neither the call detail records of the particular mobile phone relied upon by the investigating authority nor the DNA profile of the blood stains supports the case of the prosecution. He submitted that the applicant has already suffered incarceration for a period of about 4 years and 5 months. The charge is yet to

be framed and since the list of witnesses shows that the prosecution intends to examine 41 witnesses, there is hardly any possibility of the trial being completed within a reasonable period of time. On this basis, it is submitted that this Court may consider enlarging the applicant on bail, as he has no criminal antecedents and he undertakes to abide by conditions that may be imposed by this Court.

9. On the other hand, the learned APP has vehemently opposed the present application. He relies upon the recovery at the behest of the applicant of the auto rickshaw, blood stained knife, the blood stained jewellery and the blood stained clothes of the applicant. He also relies on the applicant being identified in the CCTV footage by the informant himself, as also on the chance witness who has specifically stated about having seen the applicant with the deceased, thereby supporting the last seen theory of the prosecution. It is submitted that in such cases concerning circumstantial evidence, the aforesaid material placed on record by the investigating authority sufficiently satisfies the threshold to make out a strong *prima facie* case against the applicant. The motive in the present case was the fact that the applicant was upset with the deceased who was his stepmother. It was submitted that in such circumstances, this Court may not show any indulgence to the applicant, particularly considering the brutality of the assault on the deceased.

10. This Court has carefully considered the material on record to examine as to whether the applicant can be enlarged on bail. This is admittedly a case of circumstantial evidence, as there is no eye witness to the incident in question. The principal circumstances on which the prosecution appears to be relying against the applicant are the CCTV footage and the applicant being identified by the informant on the basis of the said CCTV footage; the memorandum under Section 27 of the Evidence Act of the applicant, leading to recoveries; the statement of the chance witness, identifying the applicant in the company of the deceased on 28.05.2020 at about 08:00 p.m.; the forensic report to the extent of showing existence of blood stains of blood group of "O" group of deceased on the jewellery recovered at the behest of the applicant and indication of the motive for the applicant to have assaulted his stepmother i.e. the deceased.

11. This Court finds that the panchanama in the context of the CCTV footage was executed on 30.05.2020, wherein the informant allegedly identified the applicant as the person driving the auto rickshaw in which the deceased was said to have been traveling. The CCTV footage has not been sent for forensic analysis. It is to be noted that the CCTV footage is a vital material being relied upon by the prosecution, to show that the applicant was in the company of the deceased on 28.05.2020 at about 08:00 p.m. There is no forensic report of the CCTV footage to confirm its veracity. It is also to be

noted that the only other material for supporting the last seen theory of the prosecution, is the statement of the chance witness Mehboob Ibrahim Shaikh. The said statement was recorded on 02.06.2020 i.e. 2 days after the CCTV panchanama was executed. Other than the aforesaid statement of the chance witness, there does not appear to be any material to support the last seen theory of the prosecution.

12. That leaves only the aspect of memorandum executed under Section 27 of the Evidence Act, which led to recoveries. It is to be noted that the applicant allegedly led the police team to the auto rickshaw, which was said to have been parked at a place where it was seen in the CCTV footage. The blood stained knife was recovered from the torn seat of the said auto rickshaw. The jewellery was said to have been recovered from a room to which the applicant had led the police team. The learned APP has placed much reliance on the forensic report to the extent that it shows the existence of blood stains of blood group "O" on finger rings that were allegedly recovered at the behest of the applicant. This was because the blood group of the deceased was also "O". In this context, there is substance in the contention raised on behalf of the applicant that there does not appear to be any material to show that the jewellery allegedly recovered at the behest of the applicant was identified as the very jewellery belonging to the deceased. To that extent, it can be said that the applicant has made out a *prima facie* case as regards absence of any direct

link between the recovery of jewellery, including the aforesaid finger rings and the deceased, thereby to some extent blunting the effect of forensic report upon which the learned APP has placed reliance.

13. Apart from this, the DNA analysis shows that the blood available on the knife was not enough to amplify the DNA profile and therefore, the test as regards the knife was inconclusive. The report also shows that the DNA profile obtained from the blood stains allegedly found on the clothes of the applicant revealed that the same were of male origin, but it did not match the DNA profile of the applicant himself. The said analysis does not show presence of any blood stains of female origin, much less those of the blood group of the deceased. The said report also shows that the blood stains found on the clothes of the deceased failed to match the DNA profile of the deceased and they were not relatable to the applicant as well.

14. In cases of circumstantial evidence, as is the position as per settled law, each circumstance forming part the chain has to be proved and such chain has to be consistent with the hypothesis of guilt of the accused. In such circumstances, it is indeed a very heavy burden on the prosecution to eventually prove its case.

15. This Court has considered the material on record, only with a view to examine as to whether the applicant has been able to make out a *prima*

facie case in his favour for being enlarged on bail.

16. In view of the aforesaid discussion, this Court is of the opinion that the applicant has indeed made out a *prima facie* case in his favour. It is also to be noted that the applicant has already undergone incarceration for almost 4 years and 5 months. He has no criminal antecedents and he has undertaken to abide by the conditions that may be imposed by this Court upon being released on bail. It is an admitted position that even the charge has not been framed. Even if the prosecution ultimately may not examine all the 41 witnesses, the possibility of the trial being completed within a reasonable period of time appears to be remote.

17. Considering all the aforesaid factors, this Court is inclined to allow the present bail application.

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

A) The applicant shall be released on bail in connection with FIR No.357 of 2020, dated 29.05.2020, registered at Police Station Rabodi, District Thane City, on furnishing P.R. Bond of ₹ 50,000 and one or two sureties in the like amount, to the satisfaction of the Trial Court, if not required in any other offences.

B) The applicant shall not enter the jurisdiction of Police

Station Rabodi District Thane, during the pendency of the trial.

- C) The applicant shall cooperate with the Trial Court for expeditious disposal of the trial. He shall attend the proceedings before the Trial Court on each and every date, except when exempted for reasons to be recorded in writing.
- D) The applicant shall surrender his passport, if any, before the Trial Court within one week of being released on bail.
- E) The applicant shall give the details of his active mobile numbers and his addresses to the Trial Court within one week of being released on bail.
- F) The applicant shall not influence the victim, witnesses or any other persons concerned with the present case during the pendency of the trial.

19. In the event the applicant granted bail, violate any of the conditions recorded hereinabove, the bail granted to him would be liable to be cancelled.

20. It is made clear that the observations made hereinabove in the present order are limited to disposing of the present bail application. The Trial

Court shall proceed on merits in the present case without being influenced by the observations made hereinabove.

21. The application is disposed of.

(MANISH PITALE, J.)