

Santosh

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

BAIL APPLICATION NO. 1367 OF 2024

Balkishan Gopinath Gupta ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Santosh Deshpande, for the Applicant.
Mrs. Mahalakshmi Ganapathy, APP for the State.

**CORAM: N. J. JAMADAR, J.
DATED: 6th SEPTEMBER, 2024**

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. The applicant, who is arraigned in C.R. No.25 of 2022 registered with Mahim Police Station, Mumbai, for the offences punishable under Sections 120B, 302, 307 and 201 read with 34 and Sections 4 read with Section 25 of the Indian Arms Act, 1959, has preferred this application to enlarge him on bail.
3. The indictment against the applicant and co-accused Heena Shaikh, Kamruddin Khan (A1) and Imran alias Altaf Sultan Shaikh (A3) is that the applicant and the co-accused had entered into a conspiracy to kill Wasim (the deceased) as

the deceased was allegedly extorting money from Kamruddin (A1) by threatening to make an obscene video involving Kamruddin (A1), viral. It is alleged that the applicant and deceased Wasim were also instrumental in getting the said obscene video recorded.

4. In pursuance of the aforesaid conspiracy, on the night intervening 1st and 2nd February, 2022, Heena Shaikh, the applicant (A2) and Kamruddin (A1) took the deceased to the seashore at Mahim. Initially Heena Shaikh raked up quarrel with the deceased and assaulted the deceased by means of knife. Thereafter co-accused Kamruddin (A1) and the applicant (A2) also assaulted the deceased. With a view to screen themselves, the accused had the injuries inflicted on the person of Heena Shaikh to falsely proclaim that the deceased and co-accused Heena, were assaulted by unknown assailants.

5. Heena Shaikh got herself admitted in Bhabha Hospital. Police brought her at the seashore at Mahim where she claimed that she was assaulted. The deceased was found lying in a motionless state, with multiple stab injuries. Investigation revealed the complicity of Heena, Kamruddin (A1), the applicant (A2) and co-accused Imran (A3).

6. Mr. Deshpande, the learned Counsel for the applicant, submitted that even if the prosecution case is taken at par, it cannot be said that the applicant was one of the assailants. The entire prosecution case rests on circumstantial evidence. The applicant is sought to be roped in on the basis of CCTV footages which indicate that on the night of occurrence the deceased was seen in the company of the applicant and co-accused at Govandi railway station and Mahim Dargah and the disclosure statement allegedly made by the accused. In those disclosure statements also, no role of assault has been attributed to the applicant. Mr. Deshpande submitted that, the role attributed to the applicant is by and large similar to that of Imran (A3), who has been released on bail by an order dated 6th May, 2024. Therefore, the applicant, who has been in custody since 3rd February, 2022, deserves to be enlarged on bail.

7. The learned APP resisted the prayer for bail. It was submitted that the applicant and co-accused had brought the deceased to a secluded place and brutally killed the deceased in pursuance of a well planned conspiracy. The presence of the applicant alongwith co-accused and the deceased is evident in the images captured by CCTV. At this stage, there

is a very strong *prima facie* case to show that the applicant and co-accused Kamruddin (A1) and Heena Shaikh were with the deceased when the latter met a homicidal death. Moreover, the discoveries made by the applicant and the co-accused leading to the recovery of the weapon of offence and incriminating articles squarely incriminate the applicant. In addition, there are statements of two witnesses, who have categorically stated that it was the applicant who had persuaded those witnesses to exploit the sexual orientation of Kamruddin (A1) and have the video of the act recorded with a view to exploit Kamruddin (A1). Therefore, the applicant does not deserve to be released on bail.

8. To start with, it is necessary to note that PM Report indicates that the probable cause of death was hemorrhage and shock due to multiple stab injuries. There were as many as 15 stab injuries on the person of the deceased. Evidently, the deceased met homicidal death on account of a brutal assault by a sharp weapon.

9. At this stage, the fact that an endeavour was made to mislead the investigating agency by falsely proclaiming that the deceased and Heena Shaikh were assaulted by few unknown persons also, *prima facie*, deserves consideration.

It is in this context, the circumstantial evidence pressed into service against the applicant and the co-accused deserves to be considered albeit from the perspective of entitlement to bail. The circumstantial evidence is formed by two disclosure statements made by Kamruddin (A1) and a discovery made by the applicant (A2) leading to the recovery of the clothes, which the applicant wore at the time of the alleged occurrence. To add to this, there are images in CCTV footages which show that the applicant, co-accused and deceased were seen on the night of occurrence together at multiple places.

10. The panchanama of CCTV footages at station road, Govandi, Mumbai indicates that the applicant and Kamruddin (A1) purchased liquor at Apollo Wine Shop at Govandi at 21.46 pm on 1st February, 2022. Another panchanama (page 130) indicates that the applicant was seen with co-accused Kamruddin (A1), Heena Shaikh and the deceased at Govandi railway station premises at about 10 pm on 1st February, 2022. The panchnama of the CCTV footages (page 126) *inter alia* records that on 1st February, 2022 at about 11.02 pm. the deceased and the applicant (A2), Kamruddin (A1) and Heena Shaikh entered the Dargah

premises at Mahim and, thereafter, proceeded towards the seashore at about 11.16 pm. *Prima facie*, there is material to show the presence of the applicant alongwith the deceased and co-accused in the vicinity of the scene of occurrence in immediate proximity to the incident.

11. Cumulatively, it prima facie appears that the applicant had accompanied the deceased and the co-accused right from Govandi to Mahim and was present at the time of the actual assault with co-accused Kamruddin (A1) and Heena Shaikh. The allegation that the applicant also shared the common intention to commit the murder of the deceased is required to be appreciated in the light of aforesaid material.

12. It is true, a disclosure statement made by one accused is not a legal piece of evidence against another non-maker co-accused. However, in the case at hand, the applicant himself has made discovery leading to the recovery of the clothes which he wore at the time of the occurrence. Whether the disclosure statement made by the applicant implicating himself is distinctly related to the discovery thereby made, would be a matter for adjudication at the trial.

13. At this stage, in the face of the allegations of criminal conspiracy, the fact that in the disclosure statement of the

co-accused, or for that matter that of the applicant, role of assault by means of weapon has not been attributed to the applicant, cannot be a decisive consideration. As noted above, there are statements of witnesses to the effect that the applicant was instrumental in recording the video of co-accused Kamruddin (A1). This circumstance, *prima facie*, militates against the submission on behalf of the applicant that the presence of the applicant alongwith the co-accused and deceased was innocuous.

14. While releasing Imran (A3) this Court noted that from the material on record it *prima facie* emerged that Imran (A3) was not present at the time of the alleged occurrence. In contrast, *prima facie*, there is sufficient material to show the presence of the applicant at the time and place the deceased was belaboured to death. Hence, parity cannot be claimed with Imran (A3). I am, therefore, not inclined to exercise the discretion in favour of the applicant.

Hence the following order:

: O R D E R :

(i) 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 the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]