

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2365 OF 2024

Abdul Gaffar Kurban Khan

Applicant

versus

The State of Maharashtra

Respondent

Mr.Rahul Agarwal with Ms.Jasmin Purani i/by Agarwal &Dhanuka
Legal, Advocates for Applicnat.
Ms.Supriya N.Kak, APP, for State.

CORAM : ANIL S.KILOR, J.

DATE : 24th July 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.198 of 2022 registered with Yeola City Police Station, District Nashik, for the offences punishable under Sections 302, 307, 120-B, 212, 201 r/w 34 of the Indian Penal Code r/w Sections 3/25 and 5/27 of Arms Act.

3. Learned counsel for Applicant submits that wife of the deceased does not know Hindi or Marathi language and despite the same, the statement u/s.161 of Cr.PC was recorded in Hindi, whereas statement u/s.164 of Cr.PC was recorded in Marathi. It is submitted that these two statements of the wife of the deceased was the only material against Applicant. He therefore submits that in the above referred backdrop the statement of the wife of the deceased cannot be taken into consideration.

4. He further points out that the accused nos.2, 6, 7 and 8 are released on bail and hence Applicant is entitled to be released on the principles of parity. He further points out that while earlier application was rejected, certain points were not argued and therefore this successive application is filed.

5. On the other hand, learned APP strongly opposed the application and submitted that after rejection of his first application there is no change in circumstance. It is submitted that bail granted to the accused nos.2, 6, 7 and 8 cannot be considered for parity, as the role of the said accused are distinguishable from the role of present Applicant.

6. In the above referred backdrop I have perused the charge sheet and have gone through the material collected by the Investigating Officer during investigation. It is evident that the wife of the deceased is Parsi and to the extent that she does not know Marathi or Hindi, I find favour with the submission of learned counsel for Applicant. However, there is a mention in the said statements recorded u/s.161 and 164 of Cr.PC that it was read over to the witness and explained in Parsi language. Thus, it cannot be said that without understanding the meaning, the statements were recorded.

7. After considering the statement of wife of the deceased it is evident that there was a motive as far as Applicant was concerned and further there is specific material to show that on the date of incident and at the spot of incident the Applicant was with the deceased.

8. The offence is also registered u/s.120-B of IPC and therefore it is the case of conspiracy and since there is a sufficient incriminating

material to prima facie show that Applicant hatched a conspiracy in view of the motive to eliminate the deceased. In the circumstances, the application is rejected.

9. Trial is expedited and liberty is granted to the Applicant to move afresh in case of change of circumstance.

(ANIL S.KILOR, J.)

MST