

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2735 OF 2024

Arsad Asmohammed Khan @ Shoaib ... Applicant.
Akhtar

V/s.

The State of Maharashtra ... Respondent.

Mr Akash Kavade, Advocate for Applicant
Shri Sameer M. Mangaonkar, APP for the State.
PSI Deepak A. Kamble, Bhosri Police Station

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CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 04, 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.367 of 2021, registered with Bhosri Police Station, District: Pune for the offences punishable under Sections 436, 457, 461, 380, 427, 120-B read with Section 34 of the Indian Penal Code.
3. The applicant is in jail from last three years and till date there is no charge framed in the trial. Thus, considering the number of

witnesses and the pace with which the trial is proceeding, there is no end of the trial in sight.

4. As far as merit is concerned, having gone through the charge-sheet and the relevant material collected by the Investigating Officer during investigation, it is evident that in the present matter cash was recovered from the open space.
5. The Hon'ble Supreme Court of India in the case of *Manjunath ..vs.. State of Karnataka*, reported in **2023 SCC OnLine 1421** has observed thus:

“27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

*27.1 This court has, in various judgments, clarified this position. Illustratively, in *Jaikam Khan v. State of U.P.*⁴⁰ it was observed: – “One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries.” (Emphasis supplied)*

*27.2 Also, in *Nikhil Chandra Mondal v. State of W.B.*⁴¹ the Court held:-*

“20. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under

Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view, could not have been used, has been employed by the High Court to seek corroboration to the extra-judicial confession.” (Emphasis supplied)”

6. Moreover, the co-accused Shaukin Aktar Khan has been released on bail by this Court on 11th July, 2024.
7. Thus, considering the above referred factors, nature of the offence and the evidence collected by the Investigating Officer, though the learned APP strongly opposing the present application, I am of the opinion that the applicant is entitled for grant of bail. Hence, 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.367 of 2021, registered with Bhosri Police Station, District: Pune for the offences punishable under Sections 436, 457, 461, 380, 427, 120-B read with Section 34 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 not enter the territorial jurisdiction of Bhosri Police Station, District : Pune till conclusion of the trial, except for attending the trial.

- iv) The applicant shall provide name and address of the Police Station which he shall attend on first and sixteenth day of every month between 01:00 p.m. and 02:00 p.m., till conclusion of the trial.
- v) 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;
- vi) Liberty is granted to the State for cancellation of bail if the applicant commits similar offence or breaches any condition for grant of bail.
- vii) 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)