

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4571 OF 2024

Nasim Bano Rais Ahmed Shaikh ... Applicant
Vs.
State of Maharashtra ... Respondent

Ms. Afreen Shaikh a/w. Ms. N. Shaikh for Applicant.

Mr. Kiran C. Shinde, APP for Respondent - State.

Mr. D. S. Sonawane, Police Sub-Inspector, Deonar Police Station.

CORAM : MANISH PITALE, J.
DATE : NOVEMBER 11, 2024

P.C. :

. Heard Ms. Shaikh, learned counsel for the applicant and Mr. Shinde, learned APP for the respondent-State.

2. The applicant is seeking bail as she was arrested on 19.05.2024 in connection with FIR No.210 of 2024 dated 18.05.2024 registered with Deonar Police Station, District - Brihanmumbai, for offences under Section 302 and other provisions of the Indian Penal Code, 1860 (IPC), as also under Sections 37(1)(a), 135 and 142 of the Maharashtra Police Act, 1951.

3. The FIR was registered on the basis of the statement of the informant, who claimed that the deceased had called him on his mobile phone and said that he was having a scuffle with a co-accused person named Chand Savat. The informant claims that when he reached the place of the incident, he saw the manner in which the deceased was assaulted by the co-accused persons, which resulted in serious injuries, ultimately causing the death of the victim. In the supplementary statement of the informant recorded on the next day i.e. 19.05.2024, it

was alleged that at the time of the incident, the co-accused person, who had given the weapon of assault i.e. knife to the main accused i.e. Chand Savat, was speaking to the applicant, who happened to be his mother. On this basis, it is alleged that the applicant was actively involved in the criminal conspiracy to cause the death of the victim.

4. The learned counsel for the applicant submits that even if the statements of the victim are taken into consideration, there is no material to link the applicant with the actual incident. She was not present at the place of the incident and the prosecution appears to be relying heavily on the statement of the co-accused person. It is submitted that the applicant is a woman, who has suffered incarceration since 19.05.2024. The charge-sheet is already filed, and therefore, this Court may consider allowing the application.

5. On the other hand, the learned APP submits that the supplementary statement of the informant and the memorandum of the main accused person i.e. Chand Savat recorded under Section 27 of the Indian Evidence Act, 1872 (Evidence Act) sufficiently indicate the involvement of the applicant in the incident in question. It is submitted that sufficient material is brought on record along with the charge-sheet to show that the applicant was involved in a criminal conspiracy of causing the death of the victim.

6. This Court has appreciated the rival submissions in the light of the material produced on record. This Court is inclined to allow the application for the following reasons:-

- a. The applicant is not named in the FIR. There is no overt act attributed to her, simply for the reason that even according to the informant and the investigating authority, the applicant was not present at the place of the incident;

b. The name of the applicant features for the first time in the supplementary statement of the informant recorded on the next day and the only allegation against the applicant is that, at the time of the incident, one of the accused persons, who is the son of the applicant, was speaking to her on phone. *Prima facie*, this statement, in itself, cannot be said to be clinching material to indicate that the applicant was part of the criminal conspiracy to cause the death of the victim;

c. Reliance placed on the memorandum of main accused person recorded under Section 27 of the Evidence Act also cannot be said to be sufficient material to make out a *prima facie* case against the applicant;

d. There does not appear to be any material other than the supplementary statement of the informant and the statement of the co-accused recorded under Section 27 of the Evidence act to indicate the involvement of the applicant. Such material *prima facie* falls short of indicating active involvement of the applicant in the criminal conspiracy to cause the death of the victim. The applicant is a woman and she has suffered incarceration from 19.05.2024. The charge-sheet is already filed and no purpose would be served by further keeping the applicant in custody.

7. In view of the aforesaid reasons, the application is allowed in the following terms:-

(A) The applicant shall be released on bail in connection with FIR No.210 of 2024 dated 18.05.2024 registered with Deonar Police Station, District - Brihanmumbai, on furnishing P.R. Bond of Rs.25,000/- with one or two sureties

in the like amount to the satisfaction of the trial Court;

- (B) The applicant shall co-operate with the trial Court for expeditious disposal of the trial;
- (C) The applicant shall not tamper with the evidence of the prosecution. She shall not influence the informant, witnesses or any other person concerned with the case;
- (D) Upon being released on bail, the applicant shall immediately, and in any case within a week, furnish the details of her active mobile number and residential address to the trial Court and update about the same, if there is any change.

8. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of bail. It is also clarified that the observations made in this order are limited to the question of grant of bail to the applicant in the present application and that the trial Court shall proceed further, without being influenced by the observations made in this order.

9. The bail application stands disposed of accordingly.

(MANISH PITALE, J.)

Minal Parab