

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1262 OF 2024

Mehbullah Mataullah Khan

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Mohd. Saeed Mughal a/w Mr. Azhar Shaikh & Ms. Deepa Panikar for Applicant
- Ms. Savita M. Yadav, APP for State
- Mr. S.Y. Dhole, PSI, Bhiwandi Police Station

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 11, 2025

P. C.:

1. Heard Mr. Mughal, learned Advocate for Applicant and Ms. Yadav, learned APP for State.

2. Applicant - accused No. 2 has filed the present Application for regular bail under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.PC.**") in connection with Crime No. I 01/2021 registered with Bhiwandi City Police Station, Thane under Sections 302, 201, 364 r/w 34 of the Indian Penal Code, 1860 (for short, "**IPC**"). Applicant is arrested on 01.03.2021 and as of today he has undergone a period of detention for 4 years & 11 days.

3. The date of the incident is 25.12.2020. There are two accused in the crime. Accused No. 1 is Sohail Khan whereas accused

No. 2 is the present Applicant. Deceased victim Krishnakumar and accused No. 1 Sohel were known to each other. Accused No. 1 Sohel is a scarp dealer whereas deceased victim used to purchase scrap material from Sohel. For almost one year prior to the incident, deceased victim was instrumental in giving tips to the police about accused No. 1 which had troubled him and he decided to take revenge is borne out from the record.

4. Prosecution case is based on circumstantial evidence only. There is no eye witness. On the date of the incident i.e. 25.12.2020, deceased victim borrowed Rs. 25,000/- from his friend Ramesh Kesharwani in Thane and informed him that he will return back after meeting accused No. 1 in Bhiwandi as he desired to purchase yarn from him and after his return they will enjoy the Christmas party. Thereafter deceased victim left Thane and reached Bhiwandi and met accused No. 1 Sohel. Accused No. 1 along with deceased victim and one more person (presumably alleged to be accused No. 2) went to a nearby hotel and had tea together. The statement of the hotel owner is recorded and appended at page No. 58 of the Application. He has stated that on 01.01.2021 when he was in hotel, police came there and showed him the photograph of deceased which he identified and stated that the victim had accompanied accused No. 1 alongwith one other person. At that time, he served them the tea he had prepared.

After 10–15 minutes, the deceased victim along with accused No. 1 proceeded to the scrap shop of accused No. 1. He has stated that he did not know the third person accompanying them but would be able to identify him if seen. Adding twist to the controversy is the statement of the first informant - the brother of the deceased who in the FIR states that accused No. 1 called the deceased victim to his godown to meet the accused No. 1. This is the only substantive circumstantial evidence *prima facie* placed on record by prosecution. That apart, there is a confessional statement of accused No. 1 which is recorded under Section 27 of the Indian Evidence Act, 1872 by the prosecution which is appended at page No. 17 and in that statement, accused No. 1 has stated that on the date of the incident, Applicant had come to visit him and on that date they had a quarrel and resultantly accused No. 1 and the present Applicant strangled the deceased victim and killed him. That apart there is nothing placed on record in the prosecution case directly or even indirectly which indicts the role of the present Applicant who is arraigned as accused No. 2.

5. Mr. Mughal has argued that test identification parade ought to have been conducted in order to identify the Applicant when the prosecution is relying upon the statement of the hotel owner wherein also reference is to a third person without any identification.

6. Considering the aforesaid *prima facie* material placed on record which is purely circumstantial along with the long incarceration of the Applicant (arraigned as Accused No. 2) and the role attributed to him in the prosecution case, the Applicant has made out a *prima facie* case for grant of bail. Hence, Bail Application is allowed subject to the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

- (vi) Applicant shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

7. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

8. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]