

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2035 OF 2024

Nadeem Salim Pathan Applicant

V/s.

State of Maharashtra Respondent

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Mr.Satyam Harshad Nimbalkar i/b Mr.Rishi Ghorpade a/w
Mr.Abhishek Ulhas Arote, Mr.Anup Patil, for the Applicant.
Mr.Ajay S. Patil, APP, for Respondent-State.
Mr.Dadaraje Pawar, API, Chaturshrungi Pune City Police Station.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY 2025

P.C:-

1. By this Application, Applicant is seeking bail in Crime No.424 of 2019 registered with Chaturshrungi Police Station, Pune for the offence punishable under Sections 302, 394, 460, 120B read with Section 34 of the Indian Penal Code ('IPC' for short), Section 4(25)(27) of the Arms Act and Section 37(1) read with section 135 of the Maharashtra Police Act.

2. It is prosecution case that, on 17th April 2019 about 7.00 p.m. the Applicant and co-accused robbed the deceased by

entering in his flat and killed him by smothering with pillow on his nose and mouth.

3. It is contention of the learned counsel for the Applicant that, the prosecution case is based on circumstantial evidence. Initially FIR was lodged against unknown person under Section 380 of the IPC. After 10 days of the incident Section 302 of IPC was added. The learned counsel further submitted that, the Applicant is behind bar more than six years. Yet trial has not commenced. The charge has been framed against the Applicant in June 2022. Yet single witness has not been examined by the prosecution. It may take time to conclude the trial. The police has recovered ATM card and pillow at the instance of the Applicant. The learned counsel further submitted that, postmortem of the deceased is done, there is no opinion about cause of the death and no injuries found on the body of the deceased. So it is not clear how deceased died. As prosecution has not examined single witness. It may take time to conclude the trial. Hence, requested to allow the Application.

5. It is contention of the learned APP that, the Applicant and co-accused murdered senior citizen who was staying alone in his house, by smothering with pillow and robbed him. The Applicant and co-accused withdrew the amount from the bank accounts of the deceased. The police has recovered ATM card of the deceased at the instance of the Applicant and pillow used in the crime. It shows involvement of the Applicant in the crime. The Applicant has been identified by the witness. There is strong case against the Applicant, hence, requested to reject the Application.

6. I have heard both learned counsel. Perused charge-sheet.

7. The allegations against the Applicant are that, he and co-accused killed the deceased. The police has recovered ATM card of the deceased and pillow used in crime at the instance of the Applicant. The Applicant is behind bar more than 6 years. The charge has been framed against the Applicant in June-2022. Yet prosecution has not examined any witness. The prosecution case is based on circumstantial evidence. Initially FIR was lodged

under Section 380 of the I.P.C. i.e. for theft. After 10 days of the incident Section 302 of I.P.C. is added in FIR. The Postmortem report does not show cause of the death. To prove involvement of the Applicant in the murder of the deceased, evidence is required. As for 6 years prosecution has not examined single witness and the case is based on circumstantial evidence. It may take time to conclude the trial. Considering these facts, I am inclined to allow the Application, and I pass following order.

ORDER

- (i) The Applicant be released on bail in Crime No.424 of 2019 registered with Chaturshrungi Police Station, Pune on furnishing PR bond of Rs.50,000/- with one or two solvent sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station once in month.
- (iii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.
- (iv) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)