

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2875 OF 2024

Mohammed Rakib Abdul Hafiz Khan .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Majeed Memon, Senior Advocate a/w. Ms. Katherine Joseph and Mr. Tapish Jain, Advocates for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for Respondent – the State of Maharashtra.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 18, 2025

P.C.:

1. Heard Mr. Memon, learned Senior Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – the State of Maharashtra.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Bail in connection with C.R. No.233 of 2019 registered with Kandivali Police Station for offence punishable under Section 302 of the Indian Penal Code, 1860 (for short 'IPC').

3. Applicant is indicted for offence punishable under Section 302 of the IPC for committing death / murder of his wife for 23 years. Applicant was of 43 years and victim – wife was 40 years old on the date of the incident which occurred on the intervening night of

14.04.2019 and 15.04.2019 at about 11.00 p.m. Applicant and victim had six children who were also present in the house when the incident occurred but they were all sleeping on the attic of the said house. There was an apparent quarrel between Applicant and victim and the incident happened in the night when Applicant assaulted his wife and gave her a blow on the head with his hand / fist leading to her fall on the ground and suffering a contusion on the back of her head which was fatal. She did not move thereafter which panicked the Applicant and he immediately came out of house and dialed 100 to inform the police.

4. The statement dated 15.04.2019 of Police Officer Mr. Rane who received Applicant's phone call has been recorded and appended at page No.11 of the Application and he has stated that Applicant had informed him that he has killed his wife due to a blow which he inflicted on her head and she was lying motionless after falling to the ground and hurting herself and he asked him to come to the incident spot by giving his address. Applicant waited for the Police personnel to arrive and after they came he led them to the incident spot inside his house where the victim was lying on the ground. Thereafter due to the chaos the six children of the Applicant came down from the attic.

5. Mr. Memon, learned Senior Advocate for Applicant would draw my attention to the record of the case and would submit that

apart from the ignominy of long incarceration which he would also demonstrate from various dates in the roznama placed on record, on the merits of the matter he would persuade the Court to consider that Applicant had no intention whatsoever to kill his wife and the sole fist blow which he inflicted on her head was on the spur of the moment on being enraged due to quarrel which ensued between them.

5.1. Mr. Memon would submit that if Applicant had any intention to murder or kill his wife for 23 years and having six children namely 4 sons and 2 daughters, the present incident cannot be attributable for such a reason. On the issue of motive, he has chosen to address the Court on something which is found out and borne from the record itself. He would submit that there is reference in the record to the fact that Applicant and victim got married sometime in the year 1996. They were living in Nagpur but Applicant had to migrate and get his entire family to reside in Mumbai because of suspected infidelity of his wife. He would submit that even on the fateful day when the incident occurred, quarrel which ensued between them was due to repeated insistence by his wife to relocate back to Nagpur which Applicant did not agree and in a fit of rage and on the spur of the moment when the quarrel escalated between them, he inflicted a fist blow on her head leading to her fall and head injury on the backside of the head.

5.2. He would submit that medical report at page No.88 if seen, the cause of death stated in the medical report is on account of contusion-wound suffered by wife on her head and nothing more. In an apparent dichotomy with cause of death he has drawn my attention to the First Information Report (for short '**FIR**') which has been recorded and placed on record at page No.9 of the Application. In that FIR on page No.12 it is stated that apart from the fist blow which was inflicted on the head of the wife, prosecution has alleged strangulation of her neck by the Applicant with his knee to cause her death. Unfortunately the medical report does not support the same.

5.3. On the issue of the intervening period during which Applicant was on interim bail and did not return back and surrender himself, he has placed before me the order of the Supreme Court in the case of *In Re: Contagion of Covid-19 Virus in Prisons and Director General (Prisons)*¹. The said order refers to several interim orders passed by the Supreme Court in *Suo Moto* Writ Petition No. 1 of 2020 regarding the above issue during the Covid-19 Pandemic situation at the then time with respect to release of prisoners from jail on interim bail and their return to jail.

5.4. It is seen that several orders dated 23.03.2020; 07.05.2021; 16.07.2021 were passed in *Suo Moto* Writ Petition No.1 of 2020 as COVID-19 Pandemic situation had arisen and subsequently normalized

¹ I.A.No.179931 of 2022 in *Suo Moto* Writ Petition (C) No.01/2020 dated 24.03.2023.

after almost 3 years. Similar orders were also incidentally passed in *Suo Moto* Writ Petition Nos.3 of 2020; 4 of 2020 in so far to arrest the limitation period in civil matters. On reading the said order, Mr. Memon has drawn my attention to paragraph No.4 of the said order which reads thus:-

*“4. In view of the above, we allow the present application with an observation and direction that all those under trials/convicts who have been released on Emergency Parole/Interim Bail pursuant to the recommendation of the High-Powered Committee, in compliance of the Orders dated 23.03.2020, 07.05.2021 and 16.07.2021 passed by this Court in *Suo Moto* Writ Petition No.01/2020 have to surrender before the concerned prison authorities within 15 days.*

The present order be intimated to the concerned Accused/inmates by the concerned jail authorities that they have now to surrender within the period of 15 days. However, it is observed that thereafter after the concerned prisoners/inmates surrender before the concerned prison authorities it will be open for the concerned undertrials to pray for bail before the competent court and their applications be considered in accordance with law and on its own merits. Similarly, after the surrender by the concerned convicts who are released on Emergency Parole it will be open for them if so advised to pray for suspension of sentence before the concerned Court in their appeals which might have been pending which also may be considered in accordance with law and/or on merits.

With this the present application stands disposed of.”

5.5. He would submit that immediately on passing of the aforesaid order, Applicant surrendered himself to jail authorities. He would submit that during COVID-19 Pandemic period when and after Applicant was released on bail during the first COVID-19 Pandemic wave on 27.05.2020, Applicant had remained outside the prison for a period of 3 years 5 months but immediately abided by the order of the Supreme Court and thereafter was taken in custody. Though initially

he began by saying that long incarceration of Applicant should be a ground to be considered, however he has made it good by stating that if there is any allegation against Applicant to have breached any order, act of Applicant would be protected by the order of the Supreme Court whereby there were several interim orders with respect to interim bail granted regarding inmates who were in custody and if they remained outside the prison specific directions were passed by the Supreme Court in order dated 24.03.2023 pursuant to which Applicant surrendered himself and thereafter there has been no dereliction. He would therefore persuade the Court to consider Applicant's case *prima faice* from the point of view of his long incarceration namely the period which would otherwise amounts to 2 years and 5 months in prison but also on the merits of the matter and pass appropriate orders in the present case.

6. ***PER CONTRA***, Ms. Ganapathy, learned APP has chosen to address me initially on the conduct of Applicant which she would persuade the Court to consider stating that after Applicant was released for a period of 45 days on 27.05.2020, it was his duty to surrender back on completion of the said period in July-2020 and therefore he remaining outside is an act of transgression and misusing the liberty granted by the Court.

7. To answer the submission of Ms. Ganapathy at the outset, it needs to be seen that when Applicant was directed to return back after a period of 45 days which ended sometime in July-2020, it was the first wave of the COVID-19 Pandemic period which was suffered by the world at large including our nation. Undoubtedly, Applicant did not return back to prison. But one also needs to consider that during that very period there were several curbs and embargoes on movement which were not relaxed especially with respect to movement of people and therefore apparently benefit of doubt will have to be given to the Applicant. As far as this Court remembers, relaxation was only after a few months thereafter but that relaxation was short lived and curtailed because once again the nation was gripped with the second COVID-19 Pandemic wave which began in March-2021 and once again the nation was in throes of the COVID-19 Pandemic and curbs and embargoes were in place.

8. The apparent reference to the various orders passed in *Suo Moto* Writ Petition No.1 of 2020 was in respect of the orders passed by various Trial Courts granting interim bail to release on emergency parole or interim bail pursuant to the recommendation of the High Powered Committee during the Covid period which was in compliance with the various intermittent orders which are referred to and alluded to in the order of the Supreme Court.

9. In that view of the matter, Applicant having continued to remain on interim bail and did not surrender has no doubt took advantage of the intervening period between the two COVID-19 Pandemic waves and even after the second COVID-19 Pandemic wave but what is to be seen is that the Supreme Court has passed the order taking into cognizance all such cases of all such Applicants who were released on interim bail or emergency parole and in order to normalize the entire situation after the COVID-19 Pandemic period had passed the order dated 24.03.2023 directing that all such undertrial prisoners / convicts who were released from prison were directed to surrender before the concerned prison authorities within 15 days of the passing of the said order. There are various reasons given in the order which are necessary and important to consider since the Supreme Court while passing order dated 24.03.2023 has stated that it is only now that things have improved and therefore in respect of all those undertrials who were released on emergency parole / interim bail due to the raging COVID-19 Pandemic situation and not on merits, appropriate orders will have to be passed.

10. Ms. Ganapathy, learned APP would on the issue of merits submit that the statements of some of the children of Applicant have been recorded and appended in the present Application at page No.29 onwards. She would draw my attention to the said statements which state that the children were at the time of incident sleeping on the attic

and were not a witness to the incident which occurred because Applicant and his victim – wife were in the house on the ground below. All statements proceed on the basis that only when some sound and chaos was heard that one by one the children climbed down from the attic and asked each other and realised about the incident which had happened and the situation at that time. Admittedly, there is no eye witness to the incident. However Applicant's case is that the incident took place in the spur of the moment due to the apparent motive which has been delineated hereinabove being the cause of action and Applicant with having no intention whatsoever to kill his wife for 23 years. On a holistic consideration of the aforesaid submissions made by Mr. Memon, learned Senior Advocate for Applicant and Ms. Ganapathy, learned APP for Respondent – the State of Maharashtra, using the discretion of the Court, Applicant has made out a case for grant of Bail as his further incarceration is unwarranted and it is hoped that he provides care and support to his six children. Applicant is released on bail on following terms:-

- (i) Applicant is directed to be released on bail on
furnishing P.R. Bond in the sum of Rs.50,000/-
with one or two sureties in the like amount;
- (ii) Applicant shall report to the Investigating Officer
of concerned Police Station once every month on

the third Saturday between 10:00 a.m. to 12:00 p.m. for the first three months after release and thereafter as and when called;

- (iii) 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;
- (iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court since he is a native resident of Uttar Pradesh;
- (v) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail cancellation of this order.

11. The aforesaid observations are *prima facie* on the basis of

record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

12. Bail Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]