

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2996 OF 2024

Mohd. Anwar Mohd. Akbar Shaikh .. Applicant

Versus

State of Maharashtra .. Respondent

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- Ms. Sana Shaikh a/w. Ms. Maya S. Updeshe, Advocates for Applicant.
 - Ms. Megha S. Bajoria, APP for Respondent – State of Maharashtra.
 - Mr. Mahadeo Shirsat, P.I., Shahu Nagar Police Station, Mumbai.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 14, 2025

P.C.:

1. Heard Ms. Shaikh, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State of Maharashtra.

2. This Bail Application is filed under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail by the husband - Mohd. Anwar Mohd. Akbar Shaikh who has been indicted in connection with C.R.No.178 of 2023 registered with Shahu Nagar Police Station for offences punishable under Section 302 of the Indian Penal Code, 1860 (for short '**IPC**'). The victim is his wife. The First Informant is the sister of wife Ms. Angoori Khatun Mohammad Majibulla Shaikh who has filed the First Information Report (for short '**FIR**'). The statement of First Informant is appended at page No.37 of the Application. The date of the incident is 15.06.2023. The

statement of First Informant dated 16.06.2023 is appended at page No.37 of the Application.

3. Applicant and victim - wife married in the year 2014 and were residing together. They have three children, one daughter aged 9 years old and two sons aged 7 years old and 3 years old respectively on the date of the incident. In between for a period of two years i.e. 2015 to 2017, Applicant and wife resided in Kerela to study Arabic when there was an incident which led to bleeding of the victim's right ear and damage to the same due to assault by Applicant. The date of incident is preceded by a precursor incident when the Applicant told the victim prior to the date of incident that he had an affair with some other girl and victim confided the same with First Informant and informed her that she was beaten by Applicant as he no longer had any interest in her and he threatened her that one day he will kill her by strangulating her neck. The victim confided in First Informant and First Informant pacified her but within three days thereafter the present incident occurred.

4. According to version of Applicant he was the only person available and present in the house when the incident occurred in his confessional statement appended at page No.49 recorded on 16.06.2023. He has stated that at about 02:00 p.m., the victim felt uneasy and she was asked by him to take rest on the attic of their

house which was at a height of 8 ft. from the ground. On the attic, there was one mattress where they could sleep and according to the version of Applicant, she went to the attic to sleep. However, the statement of Applicant states that at 17:00 hours (05:00 p.m.), he heard a loud thud and cry from his wife i.e. victim and thereafter he got up and came down (obviously from the attic itself) and found that his wife had fallen down, that her legs were pointed towards the ladder and head was pointed towards the kitchen and when he neared her she was unconscious and did not move.

5. At this juncture, it is version of Applicant that he asked his daughter to go and fetch a tablet from the medical store which was brought by her and he gave the tablet to his wife through her mouth and made her drink some water but there was no movement of her body. She was admitted to the hospital but hospital record shows that she was brought in dead. Applicant is incarcerated for a period of one year and six months and Ms. Shaikh has vehemently argued that Applicant is entitled to bail on grounds of no case whatsoever being made out against Applicant.

6. After taking me through the statement of Complainant which is appended at page No.37, she would draw my attention to the medical evidence which is the post-mortem report appended from page No.33 to 36 of the Application and further medical reports appended

from page No.151 onwards to page No.173 of Application and would submit that as alleged by prosecution on the complaint filed by Complainant who was not present at the scene of crime and at the time of incident, it is incorrect to hold Applicant responsible for the death of victim. She would submit that as alleged by prosecution, there is no case of strangulation whatsoever made out which can be seen from the medical report.

7. With the able assistance of Ms. Shaikh and Ms. Bajoria, I have seen the medical post-mortem report which is in detail and it does not lie. The probable cause of death as opined by the three doctors who conducted the post-mortem of the victim is seen. One of the doctor is a Forensic Odontologist and the other two doctors are resident doctor and Assistant Professor of Department of Forensic Medicine and Toxicology. The Report states that death has occurred due to “Asphyxia due to strangulation. (Unnatural)”. Appended with the medical report, the post-mortem report supplement has the detailed description of the injuries which is appended at page No.33. Primary injury which can be seen is at item No.1 which is a horizontally placed ligature mark (pressure abrasion) seen on front of the neck extending on both sides from midline having total length of 14 cm (8 cm on right and 6 cm on left side) and said ligature mark is having a maximum width of ligature of 2.3 cm on the right side. The ligature mark is situated below the level of thyroid cartilage precisely 9

cm from the chin and 6 cm from right angle of mandible bone and 5.5 cm from left angle of mandible bone.

8. On dissection of neck, haematoma present in right sternocleidomastoid muscle of 4 cm X 1.5 cm clearly shows the pressure that would have been applied on the victim leading to the internal haematoma inside the neck. Greater cornua of the hyoid bone is seen as fractured on the right side. There are 11 other linear abrasions, linear curved abrasions, contusions, abrasion of different denominations / sizes on the face and three of them, two on the right arm and one on thumb which clearly depict the struggle and resistance that may have been offered by victim when she must have been strangled.

9. *Prima facie* the findings and observations in the medical evidence are clear and unambiguous. In that view of the matter, the theory propounded by Ms. Shaikh that death of victim has occurred due to fall from the height of 8 ft. cannot be countenanced on the basis of such overwhelming *prima facie* evidence as seen above. Equally, submissions of Ms. Shaikh that Applicant would have no motive to commit the crime since he had three children and he has some small business of mobile phone has been argued, but it may not be relevant at all, in view of the overwhelming medical evidence which speaks for itself and the admitted fact that Applicant was the only person seen

with the victim.

10. Ms. Shaikh, learned Advocate for Applicant has referred to the decision of the Delhi High Court in the case of *Rihan Versus The State (GNCTD)*¹. She would draw my attention to the distinction between a suicidal death and homicidal death and various parameters that would be found in such death in order to exclude the present case from a homicidal case. She would submit that the said distinction has been culled out from Modi's "A Textbook of Medical Jurisprudence and Toxicology" Volume 26, Chapter 20 related to Deaths from Asphyxia and would submit that medical evidence which is placed on record would not support the theory of prosecution that death has been caused rather allegedly caused by the Applicant by strangulation or due to Asphyxia and strangulation both.

11. *Prima facie*, submissions of Ms. Shaikh are simply fallacious because as per her contention death has occurred due to fall from attic from height of 8 ft. above the ground but if that be so then there would have been an injury which the victim would have suffered. Unfortunately as delineated herein above and as can be seen from page No.33, the injury described at serial No.1 clearly falsifies the theory of fall propounded by Ms. Shaikh and importantly remaining injuries are all on the face of the victim and on the hands of the victim. Though Ms. Shaikh would also argue on humanitarian grounds and would

¹ Bail Application No.1175 of 2023 pronounced on 20.11.2023.

conceded that Applicant is incarcerated for more than 1 year 6 months and he would have to provide care and support for his three children who are presently taken care of by the First Informant who is the cousin sister of Applicant, that may not be a valid ground for me to consider for release of Applicant on bail. Save and except to advance the submission in respect to cause of death due to Asphyxia, judgment relied upon by Ms. Shaikh is also not relevant since facts in that case materially vary and are entirely different from the facts in the present case.

12. In view of my above observations and findings and the record placed before me, Application fails and is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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