

Arun Sankpal

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3927 OF 2024

Shivshankar S/o Dharma Gaikwad

..Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Surenderpal M. Sharma, for the Applicant.

Mr. A.S. Shalgaonkar, APP, for the Respondent-State.

Mr. Nitin Kumbhar, PI, DCB/CID/Unit No.-4 present.

CORAM: N. J. JAMADAR, J.

DATED : 17th JANUARY 2025

P.C.:

1. The applicant, who is arraigned in CR No.80 of 2021, registered with DCB, CID, Unit-4, Mumbai, for the offences punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 4 read with Section 25 of the Arms Act, 1959, has preferred this Application to enlarge him on bail.

2. The gravamen of indictment against the applicant is that he was working as a Police Naik in the office of Assistant Commissioner of Police, Sion. He was residing with Monali (A2), his wife, and two daughters, at Shama Police Quarters. On account of martial discord Monali (A2) stayed for a while at her parental home at Akluj. The Applicant suspected Monali (A2) had developed relationship outside the marriage with Dada Jagdale (the deceased).

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3. After Monali (A2) rejoined the matrimony, the deceased continued to visit the Applicant's home at Mumbai. However, the deceased was not willing to snap the ties with his wife and children. Monali (A2), the prosecution alleges, thus had a grudge against the deceased.

4. On 29th September 2021, the Applicant called the deceased at his home. The deceased was killed by Applicant and Monali (A2). His head, upper and lower limbs were chopped off. The torso was left in front of the office of ACP. The other parts of the body of the deceased were destroyed by the Applicant and Monali (A2).

5. In fact this is the second Application for bail. The first Application, being Bail Application No. 1254 of 2023, was dismissed as withdrawn.

6. Mr. Sharma, learned Counsel for the Applicant, submitted that the Applicant has been roped in on the basis of suspicion only. Mr. Sharma submitted that the fact that the first Application was withdrawn does not preclude the Applicant from seeking bail afresh. It was urged that the Applicant has been in custody since 9th October 2021. It is unlikely that the trial can be concluded within a reasonable period. This long period of incarceration entitles the Applicant to be released on bail, urged Mr Sharma.

7. In opposition to this, the learned APP submitted that there is overwhelming material to show the complicity of the Applicant. Emphasis was laid on the statement of the then 15 year old daughter of the Applicant who has given a vivid account of the events that transpired on 29th September 2021. The said witness has stated about the presence of the deceased in the house of the Applicant, on day of occurrence, the manner in which she and her sister were kept out of the house by the Applicant, the injury on the hand of Monali (A2) and the state of mind in which she found Monali (A2) on that day and for few days thereafter, and the destruction of evidence by the Applicant. In addition, there are statements of witnesses who claimed to have heard a loud cry emanating from the house of the Applicant and noticed Monali (A2) with an injury on her hand in front of the door of the house of the Applicant. Apart from the statement of witnesses, there are multiple circumstances which squarely incriminate the Applicant.

8. I find substance in the submission of the learned APP. The statement of the elder daughter of the Applicant indeed gives a vivid account of the events that allegedly transpired on the day of occurrence. She has stated about the arrival of the deceased, the manner in which she and her sister were asked to go out of the home and have food. They were asked to lock the door from outside. After returning, she found a pungent smell in the bedroom and some article kept wrapped

in clothes below the dining table. There was an injury on the hand of Monali (A2). She was in a state of shock. On 1st October 2021, the Applicant had thrown the said article which was wrapped in clothes in a nullah near Worli. The statements of the neighbors also indicate that on the day of occurrence they had heard a loud noise emanating from the house of the Applicant. They came out of their homes and found Monali (A2) in front of her home with injury on her hand and, when inquired as to what had happened, Monali (A2) did not respond and went inside her room. The Medical Officer has stated that the Applicant had narrated that they had met with an accident and Monali (A2) sustained injuries in the said accident. The daughter has stated that the Applicant had told her that Monali (A2) sustained injuries in the fight she had with the Applicant. There is circumstantial evidence in the form of CC TV footage and the disclosure statements made by the Applicant which *prima facie* lend support to the statements of the aforesaid witnesses.

9. In substance, a very strong *prima facie* case has been made out against the Applicant. The submission of Mr. Sharma that the Applicant is entitled to be enlarged on bail on the ground of parity since this Court has released Monali (A2) on bail, does not merit acceptance. This Court has explicitly noted that the question as to whether Monali (A2) also shared the common intention to eliminate the deceased (with whom Monali (A2) was allegedly in a relationship outside the marriage) with

the Applicant, would be a matter for adjudication at the trial. The Applicant had *prima facie* a very strong motive to eliminate the deceased.

10. In the aforesaid view of the matter and having regard to the fact that the Applicant was serving in the police department, the apprehension on the part of the prosecution of tampering with evidence and threatening the witnesses, especially when the minor daughter of the Applicant is a prime witness, cannot be said to be unfounded.

11. I am, therefore, not inclined to exercise the discretion in favour of the Applicant.

12. Hence the following order:

(i) The Application stands rejected.

(ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]