

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 4067 OF 2024

Amit Motilal Vishwakarma ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Prashant Pandey, a/w Dinesh Jadhvani, Ridhima
Mangaonkar, Krishma Joshi, Rahul Shinkar, and Pramod
Sharma, i/b W3 Legal, for the Applicant.
Mr. S. H. Yadav, APP for the State.
PSI Manish Hajare, Dahisar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 8th JANUARY, 2025

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in Sessions Case No.84 of 2022, arising out of CR No.760 of 2021 registered with Dahisar Police Station, for the offences punishable under Sections 120B, 302, 201 and 177 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.

3. Raees (the deceased) was the brother of Anish Shaikh, first informant. The applicant is the wife of the deceased. The deceased was residing at Ekta Nagar, Dahisar (E), Mumbai

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along with Shahida: the co-accused, son and daughter. The deceased went missing from 20 May 2021. Shahida (A1) feigned ignorance about his whereabouts. Eventually, the first informant came to Mumbai and stayed in the house of the deceased. On the morning of 31 May 2021, while offering prayer, the first informant noticed that floor of the kitchen was uneven. Electrical bulb and tube in the said room were removed. On the next day, the first informant inspected the kitchen again and noticed that a portion of the flooring was newly laid. The first informant entertained suspicion and called the police. The police removed the newly laid floor and disinterred the body of the deceased.

4. During the course of investigation, it transpired that Shahida (A1) was in a relationship outside marriage with Amit Vishwakarma (A2), the applicant, and in pursuance of the criminal conspiracy, the deceased was killed and buried in the kitchen. Statement of a 7 year old daughter of the deceased came to be recorded. She stated that the applicant and co-accused had killed the deceased and he was buried in the kitchen. Investigation further revealed that the applicant had purchased the tiles and cement from Qureshi Lime Depot on 20 May 2021 and the debris which was removed from the

kitchen room of the deceased was given to a witness for disposal.

5. Mr. Pandey, the learned Counsel for the applicant, submitted that the circumstances pressed into service against the applicant, at best, indicate that the applicant might have rendered assistance to Shahida (A1), post occurrence. The CDR placed on record shows that Sahida (A1) was in touch with the applicant after the occurrence. Conversely, there is no material to show that the applicant was in touch with the wife of the deceased, prior to the night of occurrence. Mr. Pandey further submitted that the statement of the daughter of the deceased, a child witness, *ex facie*, appears to be a tutored version. The said evidence being inherently of weak character, the applicant deserves to be enlarged on bail.

6. In opposition to this, Mr. Yadav, the learned APP, strongly opposed the prayer for bail. Inviting the attention of the Court to the discovery made by the applicant and the statements of the shopkeeper from whom the applicant had allegedly purchased the tiles and cement and the person to whom the applicant had paid a sum of Rs.300/- to collect the debris from the house of the deceased, Mr. Yadav urged that

there is overwhelming material to show the complicity of the applicant. It was further submitted that the statements of the daughter of the deceased and the neighbours indicate that Shahida (A1) and the applicant were in a relationship. Thus, having regard to the nature of the occurrence which indicates a concrete plan to cause the death of the deceased and bury his body in the house of the deceased, the applicant does not deserve to be enlarged on bail.

7. In the light of the material on record, I find substance in the submission of Mr. Yadav, the learned APP. The circumstances arrayed against the applicant, if considered cumulatively, make out a very strong *prima facie* case. Firstly, there is discovery made by the applicant which incriminates him. Secondly, the statement of the daughter of the deceased, who was an inhabitant of the house of the deceased throws light on the role of the applicant. Thirdly, the fact that the applicant had purchased the material to relay the floor, incriminates the applicant. In addition, there is material to show that the applicant had paid amount to a witness to carry the debris from the house of the deceased. It is in this context, the CDR is required to be appreciated.

8. In substance, the circumstances arrayed against the applicant *prima facie* incriminate the applicant. Having regard to the nature and gravity of the offences and the fact that the daughter of the deceased is the prime witness, the apprehension on the part of the prosecution of tampering with evidence and threatening the witnesses cannot be said to be unfounded.

9. Moreover the learned APP informed the Court that the charge has been framed and despite witnesses being present, the accused did not render the requisite co-operation to record the evidence of the witnesses. I am, therefore, not inclined to exercise discretion in favour of the applicant.

: O R D E R :

- (i) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]