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

CRIMINAL BAIL APPLICATION NO. 4588 OF 2024

Ramjan Israil Khan

.. Applicant

Versus

The State of Maharashtra

.. Respondent

.....

- Mr. Shantanu Phanse, Advocate through VC a/w. Ms. Ilsa S. Shaikh, Advocate for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent – State.
- API – Chavan, Mumbra Police Station present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 25, 2025.

P.C.:

1. Heard Mr. Phanse, learned Advocate for Applicant and Ms. Bajoria, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Criminal Procedure Code, 1973 seeking Regular Bail in connection with C.R.No.994 of 2022 registered with Mumbra Police Station, Thane for the offences punishable under Sections 302 and 201 read with 34 of the Indian Penal Code, 1860. Applicant is arraigned as Accused No.1. Applicant is arrested on 25.10.2022.

3. FIR was lodged on 25.10.2023 by the First Informant – Mubina Faizan Momin, a resident of Ambedkar Pada, Kausa, Mumbra. She is the wife of deceased victim Faizan. It is stated that on

24.10.2022 at about 07:00 a.m. Applicant residing in the neighbourhood came to her house and in her presence requested Faizan (deceased victim) to help him search his mobile phone handset which was misplaced and lost by him in the bushes behind their house. In the presence of First Informant he assured and promised that if his mobile phone was found, he would give a party to Faizan. Hence Faizan and Applicant both immediately left together and only returned back at 01:00 p.m. At that time, Faizan informed the First Informant that Applicant's the mobile phone was found by him which was also acknowledged by the Applicant, and at that time Applicant invited and persuaded Faizan to join him for a party and asked him to accompany him. First Informant has stated that Applicant, Faizan and one more unknown person who was residing with Applicant in his house went to have a party nearby behind the water tank at Ambedkar Pada. After a few hours First Informant called Faizan and he informed her that he would return in 5 minutes but since he did not return for quite some time, at about 04:00 p.m. First Informant decided to search for him and therefore proceeded to go to the Applicant's house. At that time, First Informant confronted the Applicant and the unknown person residing with him, as she saw both of them running from the area behind their house towards her. She has stated that Applicant was wearing only undergarment whereas the unknown person was wearing only full jeans pant when First Informant stopped Applicant –

and asked him about Faizan's whereabouts to which he replied that Faizan had gone somewhere to search for Applicant's mobile phone and thereafter both of them hurriedly left. Thereafter First Informant went to the nearby bushes to search for Faizan but did not find him. She repeatedly tried to call Faizan on his phone but his phone was switched off. Thereafter she proceeded to Applicant's house but it was locked.

4. On the following day i.e. 25.10.2022, First Informant alongwith some neighbour once again attempted to search Faizan but in vain. At about 11:00 a.m. one of the neighbour Abdul Shamsher Shaikh came to First Informant's house and informed her that Faizan was murdered and his dead body was lying in the bushes behind the water tank. Thereafter First Informant alongwith neighbours went to the incident spot and found the badly mutilated body of Faizan lying in the bushes after which the police arrived immediately at the incident spot and shifted the dead body to the hospital. Post Mortem was carried out. Post Mortem Report is at page No.49 of the Application.

5. Mr. Phanse has vehemently argued before the Court that the unknown person who was arraigned as Accused No.2 has been released on bail and the role of the present Applicant cannot be anything different than the said Accused No.2 in the crime and

therefore on parity he should also be released on jail. That apart, he would submit that Applicant is incarcerated for more than 2 and ½ years and there is no certainty of the trial being completed in the foreseeable future and such long incarceration should be considered for grant of bail. He would also make one more submission that the weapon i.e. knife and blood stained clothes have been recovered nearby the incident spot after 13 days after the commission of the crime and that itself is a circumstance which the Court should consider. He would submit that there is no direct eye witness to the crime in question and therefore Applicant be given the benefit of doubt.

6. Ms. Bajoria, learned APP has countered the submissions made by Mr. Phanse by drawing Court's attention to the enormity / gravity of the offence which is committed as also circumstances which have been delineated by the Court in the facts herein above. She would submit that it was the Applicant at whose behest the victim was taken to the spot *albeit* for celebration but what transpired thereafter has been witnessed by victim's wife. Applicant feigned ignorance and mislead her by stating that her husband Faizan was looking for his mobile phone. That apart, she would submit that the fact that Applicant and co-accused were found in negligible clothes clearly indicates and points to the commission and gravity of the offence. To

that extent, she would immediately drawn my attention to the Postmortem Report which is appended at page No.49 of the Application. Reading of that report *prima facie* indicates the gruesome manner in which the crime has been committed and therefore she would submit that Applicant should not be released on bail and the Application be rejected.

7. I have perused the record with the able assistance of the learned Advocates at the bar. What impels me to reject the case of the Applicant for bail is the gravity of the offence in the present case.

8. According to Mr. Phanse, learned Advocate for Applicant, case of prosecution is based on circumstantial evidence and there is no direct evidence against the Applicant. He would submit that the co-accused person namely the unknown person i.e. Banna @ Ali Husain Farchand Khan who was with the Applicant on the day of incidence has been granted bail by this Court.

9. From the record of the case it is seen that the weapons used in the crime i.e. a knife and blood stained hammer (हातोडा) have been recovered and also blood stained clothes i.e. shirt and trousers of the Applicant are recovered by the prosecution from near the incident spot. The fact that the First Informant witness stated that Applicant did not have any clothes on the very date and time after the incident itself *prima facie* shows the direct complicity of the Applicant's role in

the crime. It clearly shows that the Applicant attempted to destroy the evidence and dispose off his blood stained clothes after committing the gruesome murder of Faizan which is proof of his complicity in crime. The crime has occurred between 01:00 p.m. to 04:00 p.m. in afternoon of 24.10.2022 and immediately before the occurrence of the crime, Applicant induced the victim Faizan into accompanying him by luring him that he wanted to give a party to him and took him alongwith the unknown person i.e. Accused No.2. In the presence of the last seen theory by the First Informant and the circumstantial evidence which is of such high standard which clearly points out the involvement of the Applicant in the commission of the crime, *prima facie* the last seen together theory and strong circumstantial evidence of the First Informant confronting the Applicant after he committed the crime, Applicant being confronted without his clothes, Applicant not being found in his house thereafter in the evening, clearly show his complicity in committing the crime.

10. First Informant has identified the Applicant having met him twice before committing the crime and once after committing the crime as she had seen the deceased victim – Faizan accompany the Applicant and proceed towards the incident spot and Applicant lying to the First Informant later after committing the crime. There are strong circumstances which cannot be neglected by the Court i.e. that

the witnesses statements which are also *prima facie* proof of the last seen together theory. What is witnessed by First Informant is also witnessed by some of the witnesses whose statements are appended at page Nos.68, 69, 70 and 72 of the Application.

11. Three witnesses namely Hussian @ Noor Munnawar Shaikh, Mohammad Aram Mohammad Asif Shaikh and Ayan Aslam Shaikh, whose statements are recorded have all seen the Applicant accompany the deceased victim Faizan going together to the incident spot at about 01:00 p.m. and after committing the crime between 04:00 p.m. and 04:30 p.m. they had seen the Applicant and the unknown person running together without some of their clothes. At that time, some of the witnesses asked the Applicant about Faizan and why was he shirtless and Applicant told them that he had fallen in the gutter and his shirt was washed away and he was saved by the unknown person i.e. co-accused who was with him. Statement of the three witnesses show that when Faizan proceeded alongwith Applicant to the incident spot, at that time the same witnesses had inquired of Faizan whether the mobile handset was found and he informed them that since it was found he was proceeding alongwith Applicant for a party towards the incident spot. These are extremely strong circumstantial facts which cannot be ignored. Hence submissions made by Mr. Phanse on parity stand strongly rejected as Applicant has been identified by at least 4

witnesses before and after committing the crime in question.

12. Though Mr. Phanse has argued that this is a case of circumstantial evidence and there is no eye witness to the incident *prima facie* when the injuries and wounds are seen they shake the conscience of the Court. The wounds and the injuries are delineated as appearing in column No.17 of the PM Report and they read thus:-

1. Two chop wounds over neck, merged with each other, above the level of thyroid cartilage, of sizes 31cm x 8cm x bone deep, bone cut, and 25cm x 8 cm x bone deep, bone cut respectively, 1st wound 3 cm below left ear lobule, 2nd wound 2 cm below angle of mandible on left side, cut skin vessels, muscles, larynx, oesophagus and vertebra at C3 – C4 level.
2. Chop wound over the nape of neck, obliquely below left ear, of size 9cm x 6cm x bone deep, bone cut C4 vertebral body.
3. Stab wound over abdomen, right side, mid axillary line, 9cm above anterior superior iliac spine, of size 2cm x 1cm x cavity deep, lower angle acute..
4. Stab wound over abdomen, right side, 4cm medial to injury no.2, of size 2cm x 1cm x cavity deep, lower angle acute.
5. Abrasion over face, just above left eyebrow, of size 4cm x 2cm, reddish.
6. Multiple abrasions over face, of varying sizes, ranging from 2cm x 0.5cm to 0.50 x 0.5cm, reddish.
7. Multiple abrasions over chest and abdomen, of varying sizes, ranging from 3cm x 1cm to 0.5cm x 0.2cm, reddish.

8. Multiple abrasions over back, of varying sizes, ranging from 2cm x 1cm to 0.5cm x 0.2cm, reddish.

Corresponding internal injuries:

- 1: Corresponding to injury no.3 cut skin, muscles, peritoneum, capsule of kidney
- 2: Corresponding to injury no.4 cut skin, muscles, peritoneum, parenchyma of right lobe of liver along the lateral surface, lower part.

13. From the above, it is seen that the victim has been murdered in the most gruesome manner by chopping and stabbing him at multiple places. Considering the extent and the dimensions of the injuries in question which is *prima facie* seen, I am not inclined to accept the Applicant's case as the circumstantial evidence and the last seen together theory clearly show his complicity.

14. Though bail is the right of the Applicant who is incarcerated, in the present case, circumstantial evidence clearly points out a finger to the Applicant when the First Informant wife of deceased victim confronted the Applicant on the date of the incident itself and after the incident had occurred. This is so because Applicant had wandered alongwith deceased victim into the bushes / area near water tank near Ambedkar Pada at about 01:00 p.m. and when the deceased victim did not return by 04:00 p.m. the First Informant wife went out looking for him and encountered the Applicant and the unknown person running from the incident spot after disposing their blood stained clothes.

15. Reference is made to a decision of the Supreme Court in the case of *Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Anr.*¹ wherein the Supreme Court has laid down 8 factors which need to be considered while determining a Bail Application in such serious crimes. Paragraph Nos.9 to 11 of the above decision are relevant and reproduced below:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced;

and

(viii) danger, of course, of justice being thwarted by grant of bail.

10. *It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal. In Masroor [(2009) 14 SCC 286 : (2010) 1 SCC (Cri) 1368] , a Division Bench of this Court, of which one of us (D.K. Jain, J.) was a member, observed as follows : (SCC p. 290, para 13)*

“13. ... Though at the stage of granting bail an elaborate examination of evidence and detailed reasons touching the merit of the case, which may prejudice the accused, should

¹ (2010) 14 SCC 496

be avoided, but there is a need to indicate in such order reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence.”

11. *We are constrained to observe that in the instant case, while dealing with the application of the accused for grant of bail, the High Court completely lost sight of the basic principles enumerated above. The accused, in the present case, is alleged to have committed a heinous crime of killing an old helpless lady by strangulation. He was seen coming out of the victim's house by a neighbour around the time of the alleged occurrence, giving rise to a reasonable belief that he had committed the murder. We feel that under the given circumstances, it was not the stage at which bail under Section 439 of the Code should have been granted to the accused, more so, when even charges have not yet been framed.”*

16. In view of the above decision of the Supreme Court in the case of *Prasanta Kumar Sarkar (supra)* which has been followed by the Supreme Court in its latest decision in the case of ***Manik Madhukar Sarve and Ors. Vs. Vitthal Damuji Meher and Ors.***² considering the gruesome nature of the crime, no case has been made out for grant of bail by the Applicant.

17. In view of my above *prima facie* observations, Bail Application stands dismissed.

[MILIND N. JADHAV, J.]

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