

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4968 OF 2024

Komal Dattatray Bhoilkar

...Applicant

vs.

The State of Maharashtra

...Respondent

VISHAL
SUBHASH
PAREKAR

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Mr. Zoheb Shaikh, for the Applicant.

Mr. A.A. Naik, APP, for the Respondent/State.

Mr. Sanap, PSI, Wadala police station.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 19, 2025

P.C.:

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. 5 of 2023 arising out of C.R. No. 182 of 2022 registered with Wadala police station for the offences punishable under sections 120-B, 302, 201 and 404 read with 34 of Indian Penal Code, 1860 (the Penal Code), has preferred this application to enlarge her on bail.

3. In fact, this is a second application for bail. The first application being BA No. 2597 of 2023 was disposed as withdrawn. The learned Session Judge seized with Session Case No. 5 of 2023 was requested to make an endeavour to commence and conclude the trial as expeditiously as possible. The applicant has again approached this Court asserting that though the charge has been framed yet there has not been any progress in the trial.

4. The indictment against the applicant and the co-accused Akshay Thakur and his brother, a child in conflict with law, is that the applicant was in a relationship with Akshay (A1). Vijay Thakur the first informant is the father of Akshay. Nirmala, the deceased was the mother of Akshay and the child in conflict with law. The deceased did not approve the relationship between the applicant and Akshay. The accused suspected that to drive wedge between the applicant and Akshay(A1), the deceased resorted to black magic. The prosecution alleged the accused and child in conflict with law hatched a conspiracy to eliminate the deceased.

5. On the intervening night of 3rd and 4th June, 2022, the co-accused Akshay and child in conflict with law came to the house of the deceased. Initially, Akshay(A1) and the child in conflict with law raked up quarrel with the deceased. The applicant was asked to wait outside. As the quarrel escalated, at about 4.00 am, the applicant was called inside the house of the deceased. Akshay(A1) forcibly pushed the deceased on the bed. Thereafter, the accused tried to smother the deceased by a pillow. The applicant allegedly tried to hold the deceased to the bed by holding the hands of the deceased. As the deceased resisted, Akshay (A/1) and child in conflict with law assaulted the deceased by means of dagger. In the process, the applicant and the co-accused Akshay (A1) had

sustained injuries. After the deceased sustained fatal injuries, the applicant, the co-accused Akshay and child in conflict with law fled away. When the first informant returned from work, he found the deceased in a pool of blood.

6. Mr. Shaikh, the learned counsel for the applicant, submitted that at best the applicant can be arraigned for the offence punishable under section 201 of the Penal Code. There is no material to indicate that the applicant was the assailant. The entire prosecution case rests on circumstantial evidence. The circumstances pressed into service against the applicant do not have conclusive tendency. A superficial injury on the hand of the applicant and the fact the applicant was seen with the co-accused on the night of occurrence do not squarely incriminate the applicant.

7. In opposition to this, Mr. Naik, the learned APP, resisted the prayer for bail. Mr. Naik invited attention of the Court to the statements of witnesses recorded under section 164 of the Code, especially that of a witness who claimed that he treated the applicant as his sister. The said witness stated that on the next morning the applicant met him along with two boys. The applicant was wearing a maxi. When inquired as to why the applicant was not in a presentable state, the applicant disclosed that she was to

marry with one of the boys, who accompanied her, and they had killed their mother. Mr. Naik submitted that aforesaid statement amounts to an extra judicial confession. Reliance was also placed on the CCTV footage which shows that the applicant was seen along with Akshay (A1) at Wadala Road railway station at about 4.50 am on 4th June, 2022.

8. I have carefully considered the material on record.

9. Evidently, the prosecution case rests on circumstantial evidence. The role attributed to the applicant appears to be that of having assisted the co-accused and the child in conflict with law, when they allegedly assaulted the deceased. The circumstances pressed into service against the applicant are, the narration of the alleged incident to the witness in the form of an extra judicial confession, the applicant, co-accused Akshay and the child in conflict with law went to the house of the sister of the applicant and had a change the clothes, and the applicant was seen with Akshay (A1) at Wadala Road railway station.

10. It is imperative to note that, though the applicant had allegedly made a disclosure statement to show the place where the clothes were thrown in the creek. Yet, nothing could be recovered pursuant to the said disclosure statement and, therefore, the said statement cannot be prima facie construed as discovery under

section 27 of the Evidence Act. In the face of the aforesaid material, the role attributed to the applicant can emerge only from the statement of the co-accused as it is not the case of the prosecution that any person has witnessed the occurrence.

11. Undoubtedly, there is prima facie material to show that the applicant accompanied the co-accused Akshay on the night of the occurrence. However, whether the narration of the incident to the witness constitutes an extra judicial confession appears to be a matter for adjudication at the trial as the question whether the said statement is incriminatory or exculpatory, would warrant consideration.

12. In the totality of the circumstances, whether the applicant was a confederate in the conspiracy and participated in the alleged assault, would be a matter for evidence.

13. Thus, the nature and quality of circumstances arrayed against the applicant and the fact that the applicant is a woman and has been in custody since 5th June, 2022 cannot be lost sight of. Moreover, having regard to the pace of the trial, it seems extremely unlikely that the trial can be concluded within a reasonable period. I am therefore persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands allowed.
- 2] The applicant Komal Dattatray Bhoilkar be released on bail in C.R. No. 182 of 2022 registered with Wadala police station, on furnishing a P.R. Bond of Rs. 30,000/- with one or more sureties in the like amount.
- 3] The applicant shall mark her presence at Wadala Road police station on first Monday of every alternate month between 11 am to 1 pm commencing from April, 2025, till the conclusion of the trial.
- 4] The applicant shall not tamper with the prosecution evidence and give threat, inducement or promise to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case so as to dissuade them from disclosing the facts to the Court or to any public officer.
- 5] The applicant shall furnish her contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- 6] The applicant shall regularly attend the trial before the Court of session.

Application disposed.

(N. J. JAMADAR, J.)