

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

**INTERIM APPLICATION NO.4911 OF 2024
WITH
INTERIM APPLICATION NO.4912 OF 2024
IN
CRIMINAL APPEAL NO.1261 OF 2024**

Rafik Pama@Usman Mulani

Age : 37 Years, Occupation : Daily Wage Worker,
Residing at : Ahire Village, Taluka : Khed,
District : Pune.

...Applicant

Versus

The State of Maharashtra

(At the instance of Khed Police Station)

...Respondent

Mr.P.K.Sanghrajka i/b. Rajeev Sawant and Associates–Advocate
for Applicant.

Mr.S.R.Agarkar–APP for Respondent–State.

**CORAM : SARANG V. KOTWAL &
S.M. MODAK, JJ.**

DATE : 21st JANUARY 2025

P.C. :

1. This is an Application for bail pending the Appeal.
2. The Applicant was convicted by the learned Additional Sessions Judge, Khed-Rajgurunagar, Pune, vide his judgment and order dated 16th October 2024 in Sessions Case No.11 of 2022. The Applicant was convicted under Section 302

of the Indian Penal Code, 1860 (“**IPC**”) and was sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.50,000/- (Rupees Fifty Thousand) and in default, to undergo rigorous imprisonment for one year.

3. The prosecution case is, that on 11th September 2021, out of a petty quarrel, the Applicant assaulted one Ramzan Shaikh with a knife and committed his murder. The FIR was lodged by PW No.1–Chandrakant Shive. The investigation was carried out and the Applicant was arrested on 13th September 2021 and since then, he is in custody.

4. According to the prosecution case, one knife, a raincoat and the clothes of the accused were recovered at his instance from different places. They were sent to Chemical Analyzer. They showed the presence of ‘B’ Group blood which was also the blood group of the deceased.

5. Learned counsel for the Applicant submitted, that the prosecution examined 5 witnesses i.e. PW Nos.1, 4, 6, 7 and 8. All of them were declared “*hostile*”. None of them supported the prosecution case. The only other evidence was recovery of those articles. But, recovery was effected from an

open space accessible to all and therefore, the conviction cannot be based on this weak piece of evidence.

6. Learned APP, on the other hand, tried to support the conviction on the basis of the recovery and also by submitting, that some part of the evidence of the hostile witness can be relied on.

7. We have considered these submissions and we have perused the notes of evidence annexed to this Appeal. The medical evidence shows, that the deceased had suffered three injuries, out of which one injury was on the right side of the neck. It was 7.5 CM deep causing death. The other two injuries were on the fingers.

8. The main evidence was of the eye-witness, PW Nos.1, 4, 6 and 8. But, all of them were declared “*hostile*” including PW No.1 who was the First-Informant. They have not supported the prosecution case. Therefore, at this stage, the Applicant does have some important points in his favour. The only evidence which needs serious consideration is, about recovery of knife, raincoat and shirt. For that purpose, the prosecution has examined PW No.3 – Abhijit Botre who is a

panch. His evidence shows, that the knife was recovered near shrubs. The raincoat was recovered from one stream and the shirt was recovered from the other spot near the shrubs. It can be seen, that all these articles were recovered from the places which were open and accessible to all.

9. The cross-examination of this panch shows that when he was called to the Police Station, at that time, the Police Officers had told him, that the Applicant had committed the murder and, he was to take out shirt, raincoat and knife and for that purpose, panchnama was to be effected.

10. Considering all these factors, it is difficult to accept the submission of the learned APP, that conviction can be based on this weak piece of evidence. Therefore, the Applicant deserves to be released on bail, during pendency of his Appeal. Hence, following order:-

O R D E R

- (i) During pendency and final disposal of the Applicant's Criminal Appeal No.1261 of 2024, the Applicant-Rafik is directed to be released on bail in connection with C.R.No.540 of 2021 registered with Khed Police Station, Dist.Pune, on executing a personal bond in the sum of Rs.30,000/- (Rupees

Thirty Thousand) with one surety in the like amount.

11. In view of that, the Interim Application No.4911 of 2024 for enlarging the Applicant on bail and the Interim Application No.4912 of 2024 for suspension of sentence, are disposed of.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)