

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

**INTERIM APPLICATION NO. 5099 OF 2024
IN
CRIMINAL APPEAL NO. 82 OF 2021**

Sharif @ Chippi Asaraf Shaikh	..Applicant
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Aamir Shaikh for Applicant. _____
Mr. S. V. Gavand, APP for State/Respondent. _____

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

DATE : 30 APRIL 2025

PC :

1. This is an application for bail pending final disposal of the Criminal Appeal No.82 of 2021 preferred by the Applicant and his co-accused i.e. original accused No.1 Rukaya Khan. Both the accused were tried before the learned Additional Sessions Judge, Thane, in Sessions Case No.24 of 2018. The learned Judge, vide his Judgment and order dated 04.01.2021 convicted the applicant and his co-accused for commission of the offences punishable under sections 302 and 201 r/w. 34 of the I.P.C. The major

sentence imposed on them was imprisonment for life, besides imposition of fine. The Applicant was on bail during trial but he was taken in custody from the date of Judgment i.e. 04.01.2021.

2. This is the third time that the Applicant has approached this Court for his release on bail during pendency of his Appeal. On the first occasion, he along with his co-accused had preferred Criminal Bail Application No.326 of 2021 in Criminal Appeal No.82 of 2021. That application was rejected by a Division Bench of this Court vide the order dated 22.02.2021. After that, the Applicant preferred a separate application for bail on his own behalf vide Interim Application No.2975 of 2023 in Criminal Appeal No.82 of 2021. On this occasion, another Division Bench of this Court vide the order dated 27.08.2024 disposed of that application, but observed that liberty was granted to the Applicant to renew his request in the month of November 2024. Pursuant to that specific liberty, the Applicant has preferred the present application. The Appeal is not being heard and, therefore, we have entertained and considered this application pursuant to the liberty granted to the Applicant to renew his request after November

2024.

3. The prosecution case is that, between the night of 13.10.2017 and 14.10.2017, both the Applicants with the help of each other committed murder of one Bahadur Yusuf Khan by strangulation. They made a show that he had committed suicide by hanging himself, but the postmortem report revealed that it was a death due to strangulation. Accordingly, C.R.No.351 of 2017 was registered at Kalwa police station and the investigation was carried out. The prosecution case is that the Accused No.1 Rukaya Khan was the wife of Bahadur and because of their differences she committed his murder with the help of the present applicant. During trial, the prosecution examined eight witnesses including the pancha witness, the Investigating Officer, the Photographer, the Medical Officer who conducted the postmortem examination, and more importantly, the only eye witness PW-5 'S' who was a five year old daughter of the deceased and the accused No.1. Her age was five years at the time of the incident and at the time of deposition she was around 7 years of age. The prosecution case against the accused revolves around her evidence.

4. Learned counsel for the Applicant submitted that the only evidence against the applicant is the evidence of PW-5 which was inherently weak in its nature. Her statement was recorded after 10 days of the incident. The Test Identification Parade was not conducted. There were important omissions in her police statement. He further submitted that the Applicant was on bail during trial and there are no allegations that he has misused that liberty.

5. Learned APP submitted that, on the first occasion, the Division Bench of this Court had considered the evidence of PW-5 and had denied bail to the applicant. He submitted that the scrutiny of the evidence of PW-5 could wait till final hearing of the Appeal.

6. We have considered these submissions and we have specifically considered the evidence of PW-5, in particular. As mentioned earlier, she was 7 years of age at the time of evidence and 5 years of age at the time of the incident. She has deposed that, her father (deceased) and the Accused No.1 mother used to

quarrel with each other. According to her, the murder was committed by her mother with the help of two persons by strangulation. Thereafter, the accused hanged his dead body inside the house. She claims to have seen the incident by standing near the kitchen. At the time of her deposition she was shown five persons, out of which, she identified the present applicant and another person named Vishal. However, said Vishal was not an accused in that case. Therefore her capacity to identify the offenders has taken a serious blow because of this mistaken identity of Vishal. She tried to depose further that the applicant used to visit their house in the absence of her father and used to give her chocolate. However, that particular explanation was not mentioned in her police statement. It was an improvement. This has to be seen in the light of the admission given by her in her cross-examination that, police had read over her statement in the Court and had told her to remember it well by-heart. Clearly, this is an attempt to tutor this witness.

7. Thus, we find that, at least against the present Applicant, there are serious arguable points in his favour. He was on bail

during trial and after the Judgment was passed, he is in custody for four years. In this view of the matter, we are inclined to grant bail to the applicant during pendency of this Appeal.

8. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.82 of 2021, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)