

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1380 OF 2025

Shafique Rafique Ansari ..Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Aniket Vagal, with Sarvy Kolhekar, for the Applicant.
Mr. Y.Y. Dabke, APP, for the Respondent-State.
Mr. Vikas Bhingardive, Shantinagar Police Station, Bhiwandi, Thane.

CORAM: N. J. JAMADAR, J.
DATED : 22nd APRIL 2025

P.C.:

1. The Applicant is arraigned in CR No. 697 of 2021 registered with Shantinagar Police Station, Bhiwandi, Thane, for an offence punishable under Section 302 read with Section 34 of Indian Penal Code (“the Penal Code”) for having committed murder of Mohammad Asif Ansari (the deceased).

2. The deceased was the nephew of the first informant. The Applicant is the maternal cousin of the deceased. Whenever the deceased came to Mumbai from his native place in the State of Uttar Pradesh, he used to roam around with the Applicant.

3. As the deceased went missing since the afternoon of 16th October 2021, the first informant lodged a missing report. On 18th October 2021

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about 4 am, the police appraised the first informant that a dead body was kept at a morgue at Indira Gandhi Hospital, Bhiwandi. The first informant identified the said dead body to be that of the deceased. Since the Applicant was given in to addiction, the first informant alleged that the Applicant might have killed the deceased. The Applicant came to be apprehended. During the course of the investigation, the Applicant allegedly made a discovery leading to the recovery of a mobile phone handset of the deceased.

4. Mr. Aniket Vagal, the learned Counsel for the Applicant, submitted that the entire prosecution case rests on circumstantial evidence. At best, two circumstances can be pressed into service against the Applicant. First, the deceased was seen in the company of the Applicant on 16th October 2021 and, second, the Applicant allegedly made the discovery leading to the recovery of mobile phone handset of the deceased. These circumstances do not have conclusive tendency.

5. Moreover the Applicant has been in custody since October 2021. Despite an order passed by this Court on 31st January 2024, in previous Bail Application, being BA No.1874 of 2023, to commence and conclude the trial as expeditiously as possible and preferably within a period of nine months from the date of communication of the said order, there has not been any progress in the trial. The trial could not commence as muddemal articles have not been produced by the prosecution.

6. Mr. Dabke, the learned APP, resisted the prayer for bail. It was submitted that there is a witness who has stated that, on 16th October 2021, the deceased was seen in the company of the Applicant. In addition, the discovery incriminates the Applicant. Therefore, the Applicant does not deserve to be enlarged on bail.

7. I have carefully perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it. Incontrovertibly, the prosecution case rests on circumstantial evidence. The statement of a witness who claimed to have seen the Applicant and the deceased in front of the Hotel Yash, at about 12.45 pm on 16th October 2021 was pressed into service to support the circumstance of 'last seen'. From the statement of the first informant, it becomes evident that the body of the deceased was found on the night intervening 17th and 18th October 2021. *Prima facie*, the time lag between the last seen with the deceased, i.e., 12.45 pm on 16th October 2021 and discovery of the dead body of the deceased on the night intervening 17th and 18th October 2021 cannot said to be so short as to rule out the involvement of a third party. That leaves the circumstance of the discovery leading to the recovery of the mobile phone handset of the deceased. To what extent, the said recovery distinctly relates to the fact thereby discovered would be a matter for adjudication at the trial.

8. The Court cannot loose sight of the fact that the Applicant has been in custody since October 2021. The trial has not yet commenced. Having regard to the pace of the proceedings before the trial Court, it is unlikely that the trial can be concluded within a reasonable period. Thus, having regard to the nature of the circumstantial evidence, pressed into service against the Applicant, coupled with the period of incarceration of the Applicant as an under-trial prisoner and unlikelihood of the conclusion of trial in a near future, this Court is persuaded to exercise the discretion in favour of the Applicant.

9. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The Applicant Shafique Rafique Ansari be released on bail in C.R. No.697 of 2021 registered with Shantinagar police station, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.
- (iii) The Applicant shall mark his presence at Shantinagar police station on the first Monday of every alternate month in between 10.00 am. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.
- (iv) The Applicant shall not tamper with the prosecution evidence. The Applicant shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

(v) On being released on bail, the Applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

(vi) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) 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 the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]