

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

**INTERIM APPLICATION NO.500 OF 2025
IN
CRIMINAL APPEAL NO.786 OF 2024**

Khushi Ajay Sahjwani

.... Applicant/
Orig. Accused No.2

versus

The State of Maharashtra

.... Respondent

.....

- Dr. Yug Mohit Chaudhry a/w Mr. Anush Shetty, Advocate for Applicant.
- Mr. A. M. Chimalker, SPP a/w Aishwarya Sharma a/w Drushti Gala a/w Ms. Geeta P. Mulekar, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**
DATE : 07th JULY, 2025

P.C. :

1. This is an application for bail and suspension of sentence pending final disposal of the Criminal Appeal No.786 of 2024 preferred by the Applicant. The Applicant was the original accused No.2 in Sessions Case No.577 of 2018, before the Additional Sessions Judge, Greater Mumbai. The learned Judge vide his Judgment and Order dated 28/05/2024 convicted the Applicant and the original accused No.1 Siddhesh

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Tamhankar for commission of the offences punishable u/s 341, 364, 302, 201 r/w 34 of the Indian Penal Code. The major sentence imposed on them was life imprisonment besides imposition of fine. They were given set off for the period they had undergone as under-trial prisoners during the investigation and the trial.

2. Heard Dr. Yug Mohit Chaudhry, learned counsel for the Applicant and Mr. A. M. Chimalker, learned SPP for the State.
3. The Applicant was arrested on 04/05/2018. Thereafter she was released on bail during the trial vide the order passed by the Hon'ble Supreme Court on 02/07/2021. Since then she was on bail till the Judgment and Order was passed by the Trial Court on 28/05/2024. Since then she is in custody.
4. The prosecution case is that the deceased in this case Kirti Vyas was working as the Chief Finance Officer in a private limited company. The original accused No.1 Siddhesh Tamhankar was her assistant in that department. The accused

No.2 was in-charge of the Academy run by the said company for training their employees. They had their office at Andheri. The deceased and the accused No.1 were working on the third floor as their office was located there. The accused No.2, i.e. the present Applicant, had her office on the second floor. On 14/02/2018, the deceased had given a notice to the accused No.1 calling upon him to improve his performance and failing which he was warned that more serious action would be taken. The outer limit was given as 16/03/2018. The prosecution case is that the accused Nos.1 and 2 were in an illicit relationship. The present Applicant i.e. the accused No.2 was a married lady with a grown up son. Both of them conspired together to eliminate the deceased. As per their conspiracy, the Applicant brought her car from her residence at Santacruz to Grant Road. The Accused No.1 joined her at Dadar. He was a resident of Parel. Both of them waited outside the building of the deceased. At around 09.00 a.m. the deceased stepped out of her housing society. The accused called her and offered her to give a lift upto their office at Andheri. They started to proceed from Grant Road. According to the prosecution case, during the distance

between Grant Road and Mumbai Central, they committed her murder. The Applicant was driving the car. The deceased was sitting in the front seat next to her. The accused No.1 was sitting on the back seat. She was killed in the car. Her dead body was shifted from the front seat to the back seat and then by folding the back seat, it was shifted to the dicky or boot space of the car. Therefore, the dead body which was kept in the dicky of the sports car was not visible. After that, both the accused attended their office. In the evening after 08.00 p.m. they took the car to a secluded place at Mahul and threw the body in a Nala.

5. In the meantime, since the deceased did not return home, her family had informed the police and had lodged a missing report. The relatives and friends were informed. They tried to search for her. In the night, at around 10.15 p.m., the accused No.1 came to D.B. Marg police station purportedly to assist others in searching for the deceased. On the next day, on 17/03/2018 the accused No.1 informed one of his colleagues that he and the Applicant had given lift to the deceased in the morning on 16/03/2018. He explained that, out of fear of being

suspected in causing her disappearance, he had not told this fact to anybody earlier. The police kept searching for the deceased. The car of the Applicant was searched on three occasions i.e. on 19/03/2018, 30/03/2018 and 13/04/2018. On the first two occasions, nothing was recovered or seized from the car. On 13/04/2018, the car was searched by an Expert from Forensic Science Laboratory. He found blood stains on the mat below the front seat next to the driver and also in the dicky. He carried out primary tests to check for the presence of blood. That portion was cut from the mat and it was sent for DNA test. The blood samples of the parents of the deceased were collected and the DNA test was conducted. It was confirmed that the blood was that of the deceased. Ultimately, the police reached to the conclusion that both the Accused i.e. the present Applicant and the Accused No.1 had committed this offence and at that stage, the FIR was lodged on 04/05/2018 at D.B. Marg Police Station, vide C.R.No.78/2018 u/s 341, 364, 302, 201 r/w 34 of the Indian Penal Code. The Applicant and the co-accused were arrested on 04/05/2018 as mentioned earlier. The investigation thereafter was transferred to DCB CID for further investigation.

The trial was conducted and 39 witnesses were examined. At the conclusion of the trial, both the accused were convicted as mentioned earlier.

6. Learned counsel appearing for the Applicant made the following submissions :

- (i) The case is based purely on circumstantial evidence. The circumstances are not proved by the prosecution at all. They do not form a complete chain. Even individual circumstances are extremely doubtful and weak.
- (ii) The first circumstance is about motive. He submitted that according to the prosecution case, the accused No.1 was given a notice, but that was only for improving his performance. That notice had nothing to do with the present Applicant. It is a far fetched theory that because of their illicit relationship, the Applicant would take part in committing murder of the deceased. He submitted that in any case, the accused No.1 had resigned w.e.f. 01/04/2018.

- (iii) The next circumstance is about finding of the blood stains on the mat in the car and the subsequent DNA report. According to Dr. Chaudhry, admittedly, the car was searched thoroughly on 19/03/2018 and 30/03/2018. Importantly, on both these occasions, the police officers did not find any blood stains on the mats. The evidence shows that the car was washed regularly and there was a person employed by the Applicant to wash the car from inside as well. Again after about one month i.e. on 13/04/2018, the car was searched and the mats were seized. He submitted that this evidence is obviously a planted evidence. The record shows that the deceased had another sister. The DNA report shows that the blood found on mats in the dicky was of the offspring of the parents whose blood was collected for testing; meaning thereby that if there was more than one offspring, it could be that of the other offspring.
- (iv) The evidence shows that PW.3 was the real sister of the

deceased and therefore it was necessary for the prosecution to have eliminated the possibility that it was not the blood of the sister of the deceased, but was of the deceased alone. The prosecution has failed miserably and has tried to suppress this aspect. Therefore, this is not an incriminating piece of evidence. He further submitted that the blood stained portion of the mat or the cut portion of the mat which was seized on 13/04/2018 were not produced in the trial. Seizure of that mat is not proved. There is no evidence to show that the mats were seized in the car were sealed.

- (v) Dr. Chaudhry further submitted that the record shows that the family took search of the deceased. They had even visited the compartment of the local train, which the deceased used to take routinely. It was a 09.11 a.m. train. When they enquired with the regular passengers there, at that time, one of the passengers told them that a person looking like the deceased had alighted at Dadar. She was apparently suffering from headache.

That passenger was shown photograph of the deceased. Dr. Chaudhry submitted that the P.W.1 the father of the deceased had deposed that the deceased was diabetic and on that particular day also she was suffering from headache. He had deposed that the Doctor treating the deceased was at Dadar. Therefore, there is a strong possibility that the deceased had got down at Dadar to consult her Doctor. Moreover, the evidence also shows that the colleagues had seen the CCTV footage of different railway stations and other areas. Some of them had got information that the deceased was seen after 09.00 am at Mumbai Central. This is another strong possibility that the disappearance of the deceased has nothing to do with the present Applicant and the co-accused.

- (vi) He further submitted that the evidence shows that one of the colleagues had received a call for ransom on 24/03/2018 asking for a ransom of Rs.5 lakhs. The police did not investigate that angle at all. That was the

third possibility which would show that the deceased could be murdered by somebody else. He further submitted that the police tried to search for the body pursuant to the statement given by both the accused. But the dead body was not found and therefore, it is a feature in favour of the Applicant.

7. Learned SPP opposed these submissions. He submitted that the prosecution had produced the CDR of both the accused before the Court. The CDR shows that there were twenty five calls exchanged between the Applicant and the co-accused on 15/03/2018 in the night. Thereafter, the CCTV footage shows that the Applicant had picked up the co-accused at Dadar. Then they had travelled to the house of the deceased. Learned SPP submitted that the accused No.1 had conducted the recce of the building of the deceased and where they wanted to wait for the deceased. This can be seen from the location of the accused No.1's cell phone record. It was in and around Lamington Road, in the area where the deceased resided. After that, both of them had met and gone to the building of the deceased. It was seen

from the CDR that they were stationery at a location outside the building of the deceased. When the deceased stepped out of her housing society, she was called by the accused and was offered a lift upto their office. This particular fact that they gave a lift to the deceased in their car at about 09.00 a.m. is an undisputed fact. Even today, Dr. Chaudhry appearing for the Applicant does not dispute the fact that the deceased was given a lift by both the accused in the car in the morning. The disputed facts are about whether the accused had committed the murder in the car or whether as the accused had told their colleagues that the deceased got down near Reliance Mall between Grant Road and Mumbai Central because of heavy traffic. She had shortly left the car.

8. The learned SPP submitted that the CCTV footage which was examined and which was played in the Court itself and which was also described by P.W.38, who was an FSL Expert shows that car had not stopped anywhere between the place where the deceased was picked up, upto Mumbai Central Railway Station and the CCTV footage does not show that the

deceased had alighted from the car. He submitted that according to the prosecution case, after committing her murder, both the accused attended their office and they disposed of the body in the late evening. They had gone to Mahul near a Nala. On the way they had crossed a Toll Naka and they had tried to hurriedly take their car through Toll Naka, but they were stopped by the employee of that Toll Naka. After paying the toll, they proceeded ahead. Surprisingly, although they were together, between a short duration of 09.00 p.m. to 09.30 p.m. there were seven calls exchanged between them. Learned SPP submitted that during that period, they had disposed of the dead body in the Nala and while doing so, one of them was keeping watch and was in constant touch with the other. He submitted that there is report of Meteorological Department about high tide, due to which the dead body was washed away further and had disappeared in the sewage water. He submitted that there was a strong motive for the accused No.1 to commit her murder and there was involvement of accused No.2 because she was in a relationship with the accused No.1. The deceased had come across the misdeeds of the accused No.1, which she had

reflected in a notice which is produced on record at Ex.114. He submitted that the ransom call was not important because somebody was trying to take advantage of the situation and it was a fraudulent call. Dr. Chaudhry contested this claim and submitted that this particular angle was not was not investigated by the police at all.

9. We have considered these submission. As submitted by both the learned counsel, it was a case purely based on circumstantial evidence. At this stage, it is not possible to discuss each of the circumstance to minute details. We have considered this application to decide whether bail can be granted, considering the gravity of the offence and nature of the evidence produced by the prosecution. These points are considered only for the consideration of this Bail Application.

10. The most important aspect in this case is about finding of the blood in the car of the Applicant. In this context Dr. Chaudhry submitted that before 13/04/2018 on two occasions i.e. on 19/03/2018 and 30/03/2018, the car was thoroughly

searched by the police, but nothing was recovered or seized from the car and even blood stains on which the prosecution heavily relies, were not seen by the police officers. We have considered this submission. The point that Dr. Chaudhry is emphasizing that there is a possibility of tampering with the evidence by planting blood stains of the sister of the deceased. His submission is that the prosecution has not ruled out the possibility that what was sent for DNA testing was the blood of the sister of the deceased and not that of the deceased.

11. In this context, the evidence of P.W.14 will have to be seen. He was working for the Forensic Science Laboratory. He has deposed that on 13/04/2018 they received a letter from Crime Branch requesting him to inspect the car for biological evidence. Thereafter the car was brought to their office. The evidence shows that present Applicant herself had driven the car to the office of FSL. P.W.14 has further deposed that he took the photographs of the vehicle. After that, the car was inspected. They saw reddish stains on the foot mat of the left side seat. They also found hair on the roof of the car. It was also collected.

The blood stains were initially tested for blood using 'Kastle-Meyer Test'. After that, they opened the dicky. The articles were removed. They found reddish stains on the mat of the dicky. Again that portion was collected and 'Kastle-Meyer Test' for blood stains were conducted. It indicated positive result for blood. That particular sample was collected by this witness. The evidence shows that the piece of that mat was seized. After that, he kept the packets in his custody. He reported this to his HOD. On 16/04/2018, he filled in the form for forwarding the articles to other divisions. Those articles were sent for DNA testing.

In the cross-examination he could not describe the size or the shapes of those stains. In the cross-examination itself he has stated that he did not collect any stains, but collected a portion of the mat containing the stain by cutting it.

12. P.W.15 had conducted the DNA analysis and had given his opinion that the blood stains collected from the mat inside the dicky was concluded to be the biological female offspring of parents, whose blood was sent. This is an important piece of evidence which the prosecution has produced.

13. Dr. Chaudhry has heavily criticized that the report as fact a weak piece of evidence because according to him the prosecution did not rule out the possibility that it could be blood of the sister of the deceased. However, in this aspect we are unable to agree with Dr. Chaudhry. The record shows that the car was throughout in the custody of the accused No.2 i.e. the present Applicant. On 13/04/2018 also, she herself had driven that vehicle and had taken that vehicle to FSL, where the mats were inspected and pieces of the mats were collected for testing. At no point of time, the car was in the exclusive possession of the police when they could have put blood of the sister of the deceased on that mat. It is not the prosecution case or even the defence case that the sister of the deceased had travelled in that car anytime. We are not inclined to doubt the integrity and genuine evidence of PW.14, who was a responsible and independent officer of the Forensic Science Laboratory. He himself had collected those articles, had taken control of those articles and then had sent them for DNA analysis. The DNA analysis record shows that it was a blood of the offspring of the parents, whose blood was sent. It is not possible to accept the

theory that it can be the blood of the sister of the deceased. Therefore, we are of the opinion that this is the most vital piece of evidence against the Applicant.

14. The other circumstance which was argued by Dr. Chaudhry was the possibility that the deceased could be alive after 09.00 a.m. on 16/03/2018. In that context, the colleagues of the deceased were examined. But they were not sure. They had only expressed their opinion as to whether the person seen in the CCTV footage at different sites, was the deceased or not. Paragraph No.6 in the examination-in-chief of PW.33 Satyajeet Thakur explains the situation, wherein he has stated that the team searched in the train compartment and asked the passengers if they had seen the deceased. They also saw the CCTV footage and forwarded an image of a girl who was looking like the deceased. One of their colleagues had commented that the girl looked like Kirti. Accused No.1 had agreed with him. But rest of the colleagues felt that the said person did not look like the deceased. Therefore, there is no conclusive evidence that the deceased was seen alive after 09.00 a.m. on 16/03/2018.

15. The next circumstance is about the CCTV footage of the car which according to the prosecution case, had not stopped anywhere to enable the deceased to get down from the car. Dr. Chaudhry submitted that the CCTV footage did not show the face of the occupants clearly. It did not even show the number plate very clearly. In that context P.W.33 Satyajeet Thakur, who was the Director of the deceased's company, had described the events. This was the witness to whom the accused No.1 had called on 17/03/2018 at 08.30 p.m. and had told him that he i.e. the accused No.1 and the present Applicant had gone for a drive on 16/03/2018 and then had gone to meet the deceased and had offered her a lift to the office. The accused No.1 then told this witness that they had dropped the deceased between Grant Road and Mumbai Central. P.W.33 then deposed that when they checked the CCTV footage, they observed that the car of the accused No.2 had not stopped at all between Grant Road upto Mumbai Central, where the accused No.1, according to them, had dropped the deceased.

16. P.W.33 has deposed that the accused No.1 told with confidence that they would not see her in the CCTV in the car after Mumbai Central. According to P.W.33 those words worried him. In this context it may be added that the conduct of the accused No.1 was highly suspicious. First of all, he did not inform anybody about this fact on 16/03/2018. On the next day he made a statement that they had given a lift to the deceased at a particular time, which turned out to be false.

17. P.W.38 is another witness who was examined by the prosecution in respect of the CCTV footage. He has deposed about the CCTV footage on the DVD played on the screen installed in the Court. He had described the CCTV footage. He had described that the car was seen at 09.08.15 and was visible until 09.09.16. The portion was enlarged and the number was checked, which was found to be that of the car of the accused No.2. The frame-by-frame analysis showed the presence of a person wearing a striped shirt besides the driver's seat. Then he has described the CCTV footage. The learned Judge has considered this evidence of the CCTV footage which is another

incriminating piece of circumstance. There are number of calls exchanged between both the accused on the previous night and also at the time of alleged disposal of the body.

18. The Applicant was residing at Santacruz. The Accused No.1 was residing at Parel. Their office was at Andheri. They had to reason to go to the opposite direction in the South to Grant Road. This was apparently done to execute their plan.

19. Thus, at this stage, we find that there are sufficiently serious incriminating circumstances against the Applicant. Considering the gravity of the offence and the seriously incriminating nature of the evidence brought on record, we are not inclined to grant bail to the Applicant.

20. The application is rejected. However, hearing of the Appeal is expedited. We again make it clear that all these observations are made only for deciding this Application for bail and suspension of sentence.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)