CHITRA SANJAY SONAWANE
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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# CRIMINAL APPELLATE JURISDICTION

## Bail Application No. 1100 of 2025

Masud Khan Kamal Khan @
Masud Ganjawala
Aged about 28 years, Occ.: Labour,
R/at.: Muslimpura, G.No.06,
Daregaon, Malegaon, Dist.Nashik.
(At present Nashik Road Central Prison) … Applicant

versus

1. The State of Maharashtra
(At the instance of Malegaon City
Police Station, Nashik)

2. Shaikh Zahid Shaikh Zakir
Age 32 years, Occ: Business,
R/at.: Gulab Parte, Plot No.6,
Malegaon, District Nashik. …Respondents

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Mr Chetan S Damre, for the Applicant.
Mr B B Kulkarni, APP, for Respondent / State.
Mr Mahendra Sandhyanshiv, for Respondent No.2.

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**Coram: R.N. Laddha, J.**
**Date: 9 December 2025**

**P.C.:**

By this application the applicant seeks bail in connection with CR No.146 of 2024, registered at Malegao City Police Station, Nashik, for offences punishable under Sections 302,

307 read with Section 34 of the Indian Penal Code (IPC), Sections 3(25), 5(27), 7(27)(3) and 7(25)(1-AA) of the Arms Act, and Sections 37(1), 37(3) r/w 135 of the Maharashtra Police Act, 1951.

2. The informant states that on 09 May 2024, between 9:00 and 9:30 PM, the applicant was arguing with Firoz Ganjawala outside the informant's house. Since rituals were underway due to the recent death of the informant's father, the informant asked them not to quarrel. At that time, the applicant fired a country made pistol at Firoz Ganjawala, but the bullet mistakenly struck the informant, causing serious injury. The informant was first taken to Civil Hospital, Malegaon, then to Shifa Hospital until 12 May 2024, and later shifted to Sunflower Hospital, Nashik, where he succumbed to his injuries on 14 May 2024.

3. The learned Counsel appearing on behalf of the applicant submits that the genesis of the present alleged incident, according to the prosecution, lies in a business related dispute between the applicant and one Frioz Ahmad. As per the prosecution's own version, the firearm discharge was aimed at Firoz, and the informant sustained the gunshot injury only accidentally, resulting in his unfortunate death. Thus, it is

contended that even as per the prosecution's own case there was no intention on the part of the applicant to cause the death of the informant.

4. The learned Counsel further submits that the prosecution alleges that accused No.3, Imran Khan, sold the pistol to accused No.2, who in turn sold it to the present applicant (accused No.1). However, it is argued that the prosecution has failed to place on record any substantive material to corroborate this allegation. No meaningful investigation has been conducted in this regard, and the record is devoid of any material indicating such a chain of possession. It is further submitted that, as per the prosecution, the weapon was subsequently taken away from the applicant by one Sheikh Shabbir, who is stated to be a cousin of the deceased. Yet, there is no seizure panchnama to support this assertion.

5. The learned Counsel also points out that, in his statement, Sheikh Shabbir does not claim to have handed over the said pistol to the police thereafter. The absence of such material, according to the learned Counsel, raises serious doubts about the prosecution's narrative pertaining to the recovery and handing of the alleged weapon. The learned Counsel also submits that, even assuming the prosecution's case to be true on

its face value, the essential ingredients of the offence punishable under Section 302 IPC are not satisfied, as there is no allegation of intention or knowledge to cause the death of the informant.

6. It is submitted that the applicant has been languishing in jail since 10 June 2024 and, despite the lapse of considerable time, the charges have yet to be framed. The prosecution proposes to examine 39 witnesses, and therefore, the conclusion of the trial is likely to be protracted. It is further pointed out that the co-accused have already been enlarged on bail by the learned Sessions Court. The applicant is willing to comply with any condition that may be imposed by this Court, including remaining outside the territorial jurisdiction of the concerned police station until the completion of the trial.

7. On the other hand, the learned APP resisted the applicant's prayer, contending that the offence is of a grave and serious nature. It is submitted that the informant succumbed to his injury, which was inflicted by the applicant by means of a firearm. The learned APP contends that there are ocular witnesses who have directly observed the incident. According to the learned APP, the question as to whether an offence punishable under Section 302 IPC is ultimately made out is a matter to be determined during the course of trial, and

therefore, at this stage, the applicant is not entitled to the relief sought. However, the learned APP candidly concedes that no seizure panchnama has been drawn in respect of the alleged weapon said to have been used in the commission of the crime. The learned APP also fairly concedes that no investigation has been carried out regarding the alleged transaction involving the sale of a pistol by accused No.3 to accused No.2, and thereafter by accused No.2 to the present applicant.

8. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records. The prosecution's case, as emerging from the FIR, is that on 09 May 2024, at about 9:00 to 9:30 p.m., the applicant was engaged in a quarrel with one Firoz Ganjawala outside the informant's house. The informant, whose father's rituals were underway, objected to the quarrel. It is alleged that in the course of this exchange, the applicant fired a shot from a country-made pistol intended at Firoz, but the bullet accidentally struck the informant. The informant, after receiving treatment at Civil Hospital, Malegaon, Shifa Hospital and subsequently Sunflower Hospital, Nashik, succumbed to the injuries on 14 May 2024.

9. The prosecution's own version attributes the firing to a

sudden quarrel and anger directed towards Firoz. There is no allegation that the applicant had any pre-existing enmity with the informant or that the applicant intended or knew that the informant would be harmed. The injury to the informant was accidental and not the result of any deliberate act directed at him. Thus, the essential ingredients of intention or knowledge required for an offence under Section 302 IPC are prima facie debatable.

10. Further, the prosecution alleges a chain of sale of the pistol from accused No.3 to accused No.2 and thereafter to the applicant. However, the investigation papers do not contain any material to substantiate this alleged transaction. No statements, recovery, or documentary proof establishing such a chain of possession have been brought on record. The learned APP also fairly concedes that no such investigation has effectively been carried out.

11. The alleged recovery of the weapon, the prosecution asserts that one Sheikh Shabbir, a cousin of the deceased, had allegedly taken the pistol from the applicant after the incident. However, there is admittedly no seizure panchnama supporting this claim. Moreover, in his own statement, Sheikh Shabbir does not state that the pistol was handed over to the police.

The applicant has been languishing in jail since 10 June 2024, however, the charges have not been framed to date. The prosecution proposes to examine 39 witnesses, and therefore, the trial is likely to take considerable time to conclude. The co-accused have already been enlarged on bail by the learned Sessions Court. The applicant has expressed willingness to comply with any stringent conditions, including staying outside the jurisdiction of the concerned police station until the conclusion of the trial.

12. It is a settled principle that, at the stage of considering bail, the Court is not expected to undertake a detailed scrutiny of evidence, but merely to assess whether a *prima facie* case exists and whether the circumstances justify continued custodial detention. In the present case, the prosecution's own narrative indicates that the firearm was directed at Firoz, with the informant sustaining injury inadvertently. The absence of evidence regarding the weapon's recovery, the uncorroborated allegations regarding its sale, and the admitted lacunae in the investigation collectively dilute the strength of the prosecution's case at this juncture. Moreover, the applicant's prolonged incarceration in the absence of trial commencement further tilts the balance in favour of bail.

13. Considering the totality of circumstances, the nature of allegations, the admitted gaps in investigation, the possibility of the act being without intention to harm the informant, the parity with co-accused, and the likelihood of a protracted trial, this Court is of the opinion that the applicant has made out a case for the grant of bail with appropriate conditions. Hence, the following order :

Order

(i) The applicant shall be released on bail in CR No.146 of 2024, registered at Malegao City Police Station, Nashik, upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(ii) The applicant shall not, either personally or through any other person, attempt to tamper with prosecution evidence or issue any threats, inducements, or promises to prosecution witnesses.

(iii) The applicant shall cooperate and regularly attend the trial proceedings before the jurisdictional Court for the expeditious disposal of the case.

(iv) The applicant shall not enter the territorial jurisdiction of concerned police station till the conclusion of the trial proceedings, save and except to attend the trial proceedings.

(v) The applicant shall furnish his residential and contact details to the Inspector of the concerned Police Station and shall notify the said officer forthwith of any subsequent changes therein.

14. The application stands disposed of accordingly.

**[R.N. Laddha, J.]**