

Ajay

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

BAIL APPLICATION NO. 1427 OF 2024

Mahetab Ali Mausam Ali Khan

Applicant /
.. Accused

Versus

The State of Maharashtra

.. Respondent

-
- Mr. Munsaf Khan a/w. Mr. Vikas Dongre, Advocates for Applicant.
 - Mr. Mayur Sonavane, APP for Respondent – State.
 - PSI – Mr. Jarande, Nirmal Nagar Police Station, Mumbai present.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 14, 2025.

P.C.:

- 1.** Heard Mr. Khan, learned Advocate for Applicant and Mr. Sonavane, learned APP for Respondent – State.
- 2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Bail in connection with C.R.No.962 of 2022 registered with Nirmal Nagar Police Station, Mumbai.
- 3.** Applicant – Mahetab Ali Mausam Ali Khan has filed this Application for bail having been in prison for 2 years and 4 months. He is indicted in the offences under Sections 307, 506 read with 34 of the Indian Penal Code, 1860 (for short “**IPC**”) and Sections 3, 5, 25 and 27 of the Arms Act, 1959.

4. Applicant is a railway employee working as Khalasi with the Railways and residing in Bandra Railway Colony alongwith his family. He was residing alongwith his two children aged 9 and 14 years at present who are schooling. Case of the prosecution is that the Complainant Shamshad Riyaz Sayyed and Applicant are known to each other as they both reside in Bandra Railway Colony, Bandra (West). They are known to each other for more than 15 years. There is a precursor incident which has come out in the prosecution story which led to the incident namely that Applicant had taken a loan from one Mr. Asif Guddu residing in Uttar Pradesh who was friend of the Complainant and in that view the Complainant told Applicant to return the loan amount which annoyed the Applicant.

5. On 08.09.2024 at about 10:30 hours when Informant was sitting below the tree in front of their building alongwith his friends, Applicant came from behind and fired one bullet from a country made pistol (देशी कट्टा) in the back of the Informant and threatened him with dire consequences. In view of this he sustained grievous injury, he was taken to Lilavati Hospital and was discharged on the same day. Crime was registered and the statement of witnesses present at the scene of crime were recorded by the prosecution. Those statements are of all three eye witnesses to the incident of their common friend Rizwanul H. Sayyed, Mohd. Ilias Qureshi Abdul Sattar and Sayeed Qureshi Abdul

Latif and are appended at page Nos.50, 52 and 53 respectively of the Bail Application. Perusal of the complaint shows that Applicant approached the Informant from behind which was noticed by the eye witnesses who have stated that Applicant injured the victim in his back. Neither the bullet which was fired has been recovered nor the weapon i.e. country made pistol (देशी कट्टा) as stated in the complaint has been recovered till date.

6. Medical certificate issued by the Lilavati Hospital in the Legal Endorsement Form which is appended at page No.28 of the Bail Application certifies that the Gunshot injury is to the chest. The medical evidence does not *prima facie* support the prosecution case as can be seen from the Complainant's version in the First Information Report (FIR), eye witnesses account appended in the present Bail Application and the certificate i.e. given by the Hospital where the Informant was admitted.

7. Mr. Khan has also drawn my attention to the fact that before the Trial Court in the past 2 years and 4 months between 30.01.2023 and 15.02.2024, the matter was adjourned 22 times without the Applicant having been produced. He would inform the Court that charges are also framed on 19.12.2024. He would argue on the intent of the Applicant who is a Government servant as he would not have indulged in the act of shooting the Informant on account of his

government job and would submit that if the prosecution version is to be accepted by the Court, then there has to be recovery of the bullet as also the weapon i.e. alleged country made pistol (देशी कट्टा) by the Investigating Agency, which has not been done.

8. He would also in the alternate refer to and rely upon the decisions of the Supreme Court in the case of *Javed Gulam Nabi Shaikh Vs. The State of Maharashtra and Anr.*¹ and the learned Single Judge of this Court in the case of *Gaurav Bandu Patil Vs. The State of Maharashtra and Anr.*² and would submit that it is only on 19.12.2024 that the charge has been framed and prosecution would be examining in all 14 witnesses as stated therein which would take undue long period of time. In the facts of the present case as argued and the case of the prosecution and incarceration of the Applicant, he would submit that this Court invoke the doctrine of speedy trial in the facts of the present case and consider the present Bail Application of the Applicant.

9. Mr. Sonavane, learned APP has vehemently objected the release of the Applicant on bail stating that the statements of the eye witnesses to the incident have seen the Applicant having injured the Informant from behind. On the issue of recovery, Mr. Sonavane would however submit that bullet and the alleged country made pistol (देशी कट्टा) has not been recovered till date. The dichotomy existing in the

¹ Petition(s) for Special Leave to Appeal (Cri.) No.3809 of 2024 decided on 03.07.2024

² Bail Application No.603 of 2024 decided on 19.04.2024 – Aurangabad Bench

medical certificate appended at page No.28 issued by the Lilavati Hospital is *prima facie* incoherent with the case of the prosecution.

10. In that view of the matter, I will consider the long incarceration of more than 2 years and 4 months in prison of the Applicant who is a handicapped person. I am inclined to grant bail to the Applicant. Hence, the following order:-

ORDER

- (i) Applicant – Mahetab Ali Mausam Ali Khan is ordered to be released on bail in connection with C.R. No.962 of 2022;
- (ii) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or two sureties of the like amount;
- (iii) Applicant shall report to the Investigating Officer of the Nirmal Nagar Police Station, once on the first Saturday of every month between 05:00 p.m. to 07:00 p.m. till the conclusion of the trial or as and when called for;
- (iv) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted for reasons to be recorded in writing;

- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence with witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall surrender his passport, if any, with the Trial Court within a period of two weeks from today;
- (viii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time, as applicable; and
- (ix) Any infraction of the above conditions shall entail revocation of this order.

11. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and shall not be considered as an expression of opinion by this Court and is only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

12. I am informed that Applicant is not residing in the vicinity of Bandra and will now be residing with his family at Daultanagar, Santacruz (West), Mumbai. In that view of the matter, Applicant shall enter the jurisdiction of Nirmal Nagar Police Station only for the

purpose of marking his attendance before the Investigating Officer and for the purpose of trial.

13. In the above terms, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.01.14
18:41:05 +0530