

AGK

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

BAIL APPLICATION NO.1870 OF 2024

Santosh Kalambe @ CR

Pandurang Kalambe

... Applicant

V/s.

The State of Maharashtra

... Respondent

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GANESH
KULKARNI

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Mr. Milan Desai with Mr. Rohan Naidu for the
applicant.

Mr. Sagar R. Agarkar, APP for the respondent-State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

1. By this application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), the applicant seeks to be released on regular bail. The case arises out of Crime Register No. 243 of 2020 registered at Malad Police Station, Mumbai, for offences punishable under Sections 302, 387, and 34 of the Indian Penal Code, 1860, as well as Sections 3, 25, and 27 of the Arms Act, 1959.

2. The prosecution story, in brief, is that the informant is an auto-rickshaw driver. His brother, Rakesh Yadav, was employed as a security guard with Om Securities and Allied Services. At the relevant time, Rakesh, along with five other security guards, was deployed at an open plot belonging to Western Construction, situated opposite Inorbit Mall, Link Road, Goregaon.

3. On 27th May 2020, a colleague of the deceased informed the informant that Rakesh had been murdered at his workplace. Upon rushing to the spot, the informant saw his brother lying in a pool of blood. Two of Rakesh's colleagues, namely Dhirat @ Bharat and Ganesh Tiwari, were present there. The police shifted Rakesh to Shatabdi Hospital, where he was declared dead. The medical examination revealed that Rakesh had sustained two firearm entry wounds on the left side of the chest, two injuries on the back, and additional injuries on the head and other parts of the body.

4. As per the statement of Ganesh Tiwari, his friend Salim had a quarrel with one Santosh Kalambe @ CR three days prior to the incident. Salim had been called to the Unnat Nagar site by CR and his associates and was assaulted. The deceased, Rakesh, had intervened and mediated between them, leading to a settlement of the dispute.

5. The prosecution further alleges that on 27th May 2020, at about 2.00 p.m., Santosh Kalambe @ CR, along with an unidentified person, came to Gate No.1 of the Western Construction site. They threatened Ganesh Tiwari at gunpoint and inquired about the whereabouts of Salim and Rakesh, warning of dire consequences. After this, they left the spot. Later, Salim informed that between 3.30 and 4.00 p.m., CR and his associates came to Meetha Nagar in search of him, but he avoided meeting them. Ganesh also received a phone call from CR stating that he was looking for Rakesh. On these circumstances, the informant suspected that his brother had been murdered by CR and his associates.

6. Learned Advocate for the applicant submitted that the applicant has been in custody since his arrest on 10th June 2020. Despite the passage of considerable time, not a single prosecution witness has been examined till date. It is submitted that the CCTV footage relied upon by the prosecution does not clearly identify the applicant, as the faces of both the driver and the pillion rider in the footage are covered, and the registration number of the vehicle is not visible. According to the learned Advocate, the investigating agency has failed to establish the identity of the applicant through any cogent or reliable evidence. He contends that the material relied upon by the prosecution is fabricated by the investigating agency.

7. It is further submitted that the two-wheeler allegedly used in the commission of the offence is admittedly registered in the name of the wife of accused No.1 and not in the name of the present applicant. The learned Advocate also pointed out that the statement of the witness who allegedly identified the applicant was recorded even before the seizure of the CCTV footage, thereby creating a serious doubt about the veracity of the identification. He further submitted that the eye-witness whose statement was recorded on 1st June 2020 is not visible anywhere in the CCTV footage near the scene of offence. In these circumstances, he prays that the applicant, who is facing prolonged incarceration without progress in the trial, be released on regular bail.

8. Per contra, the learned APP has strongly opposed the grant of bail to the applicant. It is submitted that the Aactiva scooter used in the commission of the crime is registered in the name of the

wife of accused No.1, and the CCTV footage shows the applicant along with the co-accused near the scene of offence. It is further contended that the pistol allegedly used for committing the murder was recovered at the instance of the present applicant, and the forensic science laboratory report conclusively confirms that the bullet recovered from the body of the deceased was fired from the said pistol.

9. The learned APP also pointed out that the applicant has as many as eleven criminal antecedents to his discredit, most of them involving offences against the human body, including a case under Section 307 of the Indian Penal Code. Drawing attention to the order of this Court dated 21st July 2025, whereby the bail application of a co-accused was dismissed, it is submitted that there is no change in circumstances justifying a different view in the case of the present applicant. The learned APP further contended that considering the applicant's criminal history, there is a strong likelihood that if released on bail, he may indulge in similar serious offences. He, therefore, prayed that the application be rejected.

10. I have considered the submissions advanced by the learned Advocate for the applicant and the learned APP for the State, and have perused the material placed on record.

11. The FIR and statements of material witnesses, when read together with the CCTV footage and recovery panchanamas, prima facie indicate the involvement of the present applicant in the commission of the offence. It is true that the CCTV footage shows

the faces of the assailants covered, and the registration number of the two-wheeler is not visible. However, the investigation has brought on record that the two-wheeler used for the offence is registered in the name of the wife of accused No.1, and the said vehicle was recovered and seized. The prosecution has also placed reliance on the statement of witnesses who have identified the applicant in the vicinity of the crime spot at the relevant time.

12. More importantly, the record shows that the pistol used for the murder was recovered at the instance of the present applicant. The ballistic expert's report confirms that the bullet recovered from the body of the deceased was fired from the same weapon. This recovery, coupled with the forensic confirmation, provides strong prima facie evidence directly connecting the applicant to the homicidal act.

13. The applicant's contention that the witness's statement was recorded before the seizure of the CCTV footage, and that the said witness is not visible in the CCTV footage, is a matter that can only be tested during trial. At this stage, the Court is not expected to conduct a mini-trial or meticulously evaluate the credibility of each piece of evidence; the limited consideration is whether the prosecution material discloses a prima facie case and whether releasing the accused would affect the fair conduct of the proceedings.

14. As regards the argument of prolonged incarceration, it is true that the applicant has been in custody since 10th June 2020 and that the trial has not yet commenced. However, the delay in

commencement of the trial, by itself, cannot be a decisive factor in cases involving grave offences punishable with death or imprisonment for life, particularly when there exists strong prima facie material against the accused. The right to a speedy trial is undoubtedly recognised under Article 21 of the Constitution, but in balancing the individual's liberty against the interest of society and the gravity of the offence, the latter assumes greater weight in the facts of the present case. The remedy for delay lies in seeking appropriate directions for expeditious trial rather than releasing an accused involved in a heinous and premeditated murder.

15. The applicant's criminal antecedents also weigh heavily against him. The record discloses that the applicant has 11 prior criminal cases, most of which relate to serious offences involving violence against the human body, including an offence under Section 307 of the IPC. This criminal background, coupled with the present allegations, raises a reasonable apprehension that if released, the applicant may commit similar offences or attempt to influence witnesses.

16. The allegations in the present case pertain to an offence under Section 302 of the IPC read with provisions of the Arms Act, involving the targeted killing of a security guard while on duty. The manner of the offence, as indicated in the material, reveals a calculated and deliberate attack. Such offences undermine public safety and require a cautious judicial approach while considering bail.

17. The learned APP has rightly pointed out that a co-ordinate

Bench of this Court, by order dated 21st July 2025, has already rejected the bail application of the co-accused on similar allegations, and there is no material change in circumstances warranting a different view for the present applicant.

18. Considering the seriousness of the charge, the nature of the evidence including recovery of the firearm with ballistic confirmation, the applicant's criminal antecedents, and the potential risk to public safety, I am of the opinion that the ground of long incarceration does not, in the facts of this case, tilt the balance in favour of granting bail. The apprehension expressed by the prosecution that the applicant may commit similar offences or tamper with evidence if released is well-founded.

19. Having regard to the fact that the applicant has been in custody since 10th June 2020, it is directed that the learned Trial Court shall make all endeavour to commence the trial at the earliest and to examine the material witnesses, including eye-witnesses and panch witnesses to the recovery, within a period of six months from the date of receipt of this order.

20. It is made clear that in the event the material witnesses are not examined within the aforesaid period of six months for reasons not attributable to the defence, it shall be open for the applicant to move a fresh application for bail, which shall be considered on its own merits and in light of the then prevailing circumstances.

21. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)