

VRJ

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

BAIL APPLICATION NO.1952 OF 2024

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Sonu Khan Alias Ijazuddin Mirajuddin
Pathan

... Applicant

V/s.

The State of Maharashtra

... Respondent

Ms. Sarah Shamim for the applicant.

Ms. Shilpa G. Talhar, APP for the State.

Mr. Kiran Matkar, IO, Bhiwandi Taluka Police Station,
Thane is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 2025

P.C.:

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973, by which the applicant is seeking regular bail in connection with Crime No. I-141 of 2021, registered with Bhiwandi Taluka Police Station, Thane, for offences punishable under Sections 302, 201 and 34 of the Indian Penal Code, 1860, and Sections 3(1) and 181 of the Motor Vehicles Act.

2. The case of the prosecution, in brief, is as follows: On 9th April 2021, one Assistant Faujdar Shri Vitthal Narayan Patil, attached to Bhiwandi Taluka Police Station, lodged the First Information Report (FIR) against two accused persons, namely

Mohd. Shakir Nanhe Pathan and Sonu Khan @ Ijazuddin Mirajuddin Pathan. The contents of the FIR reveal that on 8th April 2021, at around 8:10 p.m., while the complainant was on duty at Yeavai Police Chawki, two to three persons approached and informed him that a woman was lying injured and bleeding profusely on the Nashik-Mumbai Road. Upon receiving the said information, the police officers immediately rushed to the spot and found that the lady's throat had been slit with a sharp object. Though the police officers attempted to talk to her, she could not speak clearly due to her critical condition. She was immediately shifted to IGM Hospital, Bhiwandi. At the hospital, PSI Smt. Chaughule attempted to record her statement. The injured woman then stated that her husband, Mohd. Shakir Nanhe Pathan, and his nephew Shakir Akhtar Pathan had assaulted her by slitting her throat. Based on this dying declaration, the police registered the present FIR.

3. The learned advocate appearing for the applicant has submitted that the entire prosecution case rests on circumstantial evidence. It is submitted that the only circumstance pointing towards the involvement of the present applicant is that he was allegedly seen in the company of the deceased at a location approximately 26 kilometers away from the spot of incident. It is further submitted that the recovery of the knife allegedly used in the assault was made at the instance of accused No.1, and not the present applicant. The alleged motive of marital discord is attributed to accused No.1, the husband of the victim, and not to the present applicant. The only role attributed to the applicant is

that he was allegedly driving the auto-rickshaw which was used to transport the deceased to the place where she was found injured. It is, therefore, contended that the applicant, having been arrested on 9th April 2021, has been in custody for a considerable period, and is entitled to be released on bail, particularly when his role is only of a driver, and the rest of the allegations are general in nature.

4. On the other hand, the learned Additional Public Prosecutor has opposed the bail application. It is submitted that the present applicant and accused No.1 acted in furtherance of a common intention to commit the offence of murder punishable under Section 302 of the IPC. The prosecution claims that since the auto-rickshaw was driven by the applicant and used in the commission of offence, he had an active role and knowledge of the criminal act. It is further submitted that charges have already been framed by the trial Court, but the trial is still pending, and prosecution witnesses are yet to be examined. Therefore, it is urged that considering the seriousness of the offence and the stage of the trial, the application for bail deserves to be rejected.

5. I have carefully considered the rival submissions of the learned counsel for the applicant and the learned Additional Public Prosecutor. I have also perused the material placed on record including the FIR, the statement of the injured before death, and the case diary papers.

6. It is not in dispute that the injured woman, before her death, made a statement attributing specific allegations only against her

husband Mohd. Shakir Nanhe Pathan and his nephew Shakir Akhtar Pathan, and not against the present applicant. The role of the present applicant, as per the prosecution, is that he was driving the auto-rickshaw in which the deceased was last seen. There is no allegation that he himself used any weapon or inflicted any injury on the deceased. The recovery of the knife, which is the alleged weapon of offence, is not at the instance of the applicant but of the co-accused.

7. It is further to be noted that the prosecution case is based on circumstantial evidence. The applicant has been in custody since 9th April 2021, i.e., for more than three years. The charges have been framed, but trial has not commenced, and there is no certainty as to when all prosecution witnesses will be examined. Prolonged incarceration without conclusion of trial amounts to pre-trial punishment, which is not in consonance with the principles of criminal jurisprudence.

8. The applicant is a local resident and no material is brought to the Court's notice to show that he may abscond or tamper with the prosecution witnesses. With appropriate conditions, the possibility of him misusing the liberty can be curtailed.

9. Considering the above factors, particularly the circumstantial nature of the evidence, the limited role attributed to the applicant, and the period of incarceration already undergone, this Court is of the view that the applicant deserves to be enlarged on bail.

10. Hence, the following order is passed.

11. The applicant Sonu Khan Alias Ijazuddin Mirajuddin Pathan

is directed to be released on bail in connection with Crime No.I-141 of 2021 registered with Bhiwandi Taluka Police Station, Thane for offences punishable under Sections 302, 201 and 34 of the Indian Penal Code, 1860; and Sections 3(1) and 181 of the Motor Vehicle Act, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- a) The applicant shall not tamper with the evidence or attempt to influence any witness.
- b) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- c) The applicant shall report to the Bhiwandi Taluka Police Station, Thane on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
- d) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- e) The applicant shall not indulge in any criminal activity during the pendency of the trial.

12. The bail application stands disposed of in the aforesaid terms.

(AMIT BORKAR, J.)