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

## BAIL APPLICATION NO.2682 OF 2024

Faisal Imran Shaikh … Applicant

V/s.

The State of Maharashtra … Respondent

ATUL GANESH KULKARNI
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Date: 2025.08.01 18:37:18 +0530

Mr. Nitin S. Satpute with Mr. Danish Sayyed, Mr. Rachit Singh, Ms. Shobha Bhddhiwvant, and Ms. Sofiya Ansari for the applicant.

Ms. Supriya Kak, APP for the respondent-State.

Mr. Ravindra Kelkar, PSI, V.B. Nagar Police Station, Mumbai and Mr. Ajay B. Kshirsagar, Sr. P.I., Crime Branch (MDB) are present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 1, 2025

P.C.:

**1.** By the present application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), the applicant seeks regular bail in connection with Crime Register No. 376 of 2021, registered with Vinobha Bhave Nagar Police Station, Mumbai, for offences punishable under Sections 302 (murder), 376 (rape), 201 (causing disappearance of evidence), and 34 (common intention) of the Indian Penal Code, 1860 ("IPC" for short).

**2.** Learned Advocate for the applicant has submitted that the prosecution case is entirely based on circumstantial evidence. It is

contended that the three primary circumstances relied upon by the prosecution are: (i) the applicant's presence near the spot of the incident, as allegedly shown through Call Detail Records (CDR); (ii) the recovery of the alleged murder weapon, i.e., a hammer; and (iii) the CDR also showing that the applicant was in touch with co-accused No.1, who, as per the prosecution, had a motive to kill the deceased due to an alleged affair. However, it is pointed out that the CDR location corresponds to the applicant's regular place of residence and, therefore, cannot by itself establish his presence at the precise place of occurrence. It is further submitted that the applicant has been in custody since 27th November 2021. The charges in the case have been framed, but no witnesses have been examined so far. The prosecution has cited 34 witnesses, and looking at the number and pendency of cases, it is unlikely that the trial will conclude in the near future. It is also submitted that co-accused No.3, against whom similar allegations are levelled, has already been granted bail by this Court. Hence, the applicant prays for parity and seeks his release on regular bail.

**3.** On the other hand, learned APP for the State has opposed the bail application by contending that the evidence collected during investigation prima facie connects the applicant to the commission of the offence. It is argued that the CDR data shows that the applicant was constantly in touch with co-accused No.1 around the time of the incident. Furthermore, a hammer, allegedly used in the commission of the offence, has been recovered from the applicant's residence. In addition, the prosecution relies on an extra-judicial confession attributed to the applicant. Taken

together, these circumstances, according to the prosecution, form a complete chain pointing towards the guilt of the applicant, thereby leaving no room for any other hypothesis except the involvement of the applicant. It is therefore urged that no case is made out for grant of bail, and the application deserves to be rejected.

4. I have carefully considered the rival submissions made by the learned Advocate for the applicant and the learned APP for the State. I have also perused the charge-sheet and the material placed on record.

5. At the outset, it is to be noted that the case of the prosecution is entirely based on circumstantial evidence. There is no eye-witness account of the incident. It is well-settled that in cases based on circumstantial evidence, each circumstance relied upon by the prosecution must be clearly established, and the chain of circumstances must be so complete that it leads to the only conclusion of the guilt of the accused. At this stage, the evidence on record is yet to be tested through cross-examination.

6. The primary circumstance relied upon by the prosecution is the applicant's location as per the CDR records. However, it is not disputed that the CDR location corresponds to the regular place of residence of the applicant. Merely because the mobile phone of the applicant was active in that area cannot by itself lead to the inference that the applicant was present at the scene of offence, especially in the absence of any other direct evidence such as CCTV footage or independent witnesses.

7. As regards the recovery of the alleged weapon (hammer), it is settled law that recovery by itself is not conclusive, particularly when it is from the residence of the accused, and more importantly, when there is no forensic report linking the weapon to the crime. The prosecution has also relied on an alleged extra-judicial confession. However, such evidence is inherently weak and needs corroboration through other independent material, which appears to be lacking in the present case.

8. It is further to be noted that the applicant has been in custody since 27th November 2021, i.e., for a period of more than three years and eight months. The charges have been framed, but no witnesses have been examined till date. The prosecution has cited as many as 34 witnesses, and considering the usual pace of trial and the pendency in trial courts, it is evident that the trial is not likely to conclude in the near future.

9. There is no material placed on record to indicate that the applicant, if released on bail, would flee from justice or tamper with the prosecution evidence or influence the witnesses. Appropriate conditions can be imposed to secure his presence during trial.

10. In view of the above circumstances, particularly the long incarceration, the absence of direct evidence, the weak nature of the circumstantial links, and the delay in trial this Court is of the considered opinion that a case for grant of regular bail is made out.

11. Hence, following order is passed:

i) The bail application is allowed;

ii) The applicant is directed to be released on regular bail in connection with Crime Register No.376 of 2021 registered with Vinobha Bhave Nagar Police Station, Mumbai for offences punishable under Sections 302, 376, 201 and 34 of the Indian Penal Code, 1860, upon furnishing a personal bond of Rs.50,000/- (Rupees Fifty 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 evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(b) The applicant shall report to the Vinoba Bhave Nagar Police Station, Mumbai once in a month, specifically on first Monday, between 10:00 a.m. and 12:00 noon, until further orders.

(c) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

(d) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(e) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall

inform the Court in writing of any change in residence or contact details during the pendency of the case.

(f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

**12.** The bail application is allowed and disposed of.

(AMIT BORKAR, J.)