

Shabnoor

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

BAIL APPLICATION NO. 3401 OF 2024

Mohammad Issq

Mohammad Ayyub Ansari

... Applicant

V/s.

State of Maharashtra

... Respondent

SHABNOOR
AYUB
PATHAN

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Mr. Raju Suryawanshi, for the applicant.

Ms. Mayur Sonawane, APP for the State – respondent.

Mr. Jagdish Gite, PSI, Nizampura Police Station.

CORAM : AMIT BORKAR, J.

DATED : JUNE 18, 2025

P.C.:

1. This is an application preferred under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail by the applicant in connection with Crime Register No. I-69 of 2022 registered with Nizampura Police Station, Bhiwandi, District Thane, for offences punishable under Sections 302 (murder), 307 (attempt to murder), and 452 (house-trespass after preparation for hurt or assault) of the Indian Penal Code, 1860.

2. The prosecution case, briefly stated, is that the applicant and the deceased were known to each other. It is alleged that there was a quarrel between them a day prior to the incident, and on the following day, the applicant, due to that quarrel, is said to have

entered the premises of the deceased and inflicted fatal injuries with a knife, leading to his death. The case of the prosecution is primarily based on circumstantial evidence. The applicant was arrested on 1st April 2022. After completion of investigation, the charge sheet was filed on 23rd June 2022. The applicant had earlier approached the learned Sessions Court for bail, which came to be rejected. He has therefore approached this Court by filing the present bail application.

3. Learned counsel appearing for the applicant has submitted that even if the prosecution's case is accepted at face value, the material on record does not conclusively establish the guilt of the applicant, and the prosecution is relying on the following three circumstances: (i) existence of a quarrel between the applicant and deceased on the previous day; (ii) recovery of knife allegedly used in the crime; and (iii) the alleged dying declaration made by the deceased to his daughter while being taken to hospital, naming the applicant as the assailant.

4. It is submitted that these circumstances, when viewed collectively, are not sufficient to bring home the charge of murder under Section 302 IPC. Learned counsel further points out that the applicant has been in custody since 1st April 2022, and the charges have not yet been framed till date. In such circumstances, it is argued that further incarceration of the applicant would amount to pre-trial punishment. It is also submitted that the applicant has no prior criminal antecedents and is a permanent resident of the local jurisdiction. Hence, prayer is made for grant of bail.

5. On the other hand, learned Additional Public Prosecutor has opposed the application by submitting that there is sufficient prima facie material on record to indicate the involvement of the applicant in the alleged offence. It is submitted that the statement made by the deceased to his daughter while being taken to the hospital, wherein he allegedly named the applicant as the assailant, is a crucial piece of evidence. It is further argued that the recovery of knife under Section 27 of the Evidence Act corroborates the prosecution story. At the stage of bail, it is submitted, only a prima facie view is to be taken and in the present case, the material is sufficient to deny bail.

6. I have considered the rival submissions advanced on behalf of both sides. I have also perused the charge sheet and the statements of the material witnesses, including the daughter of the deceased. The prosecution case is that the deceased, while being taken to the hospital, informed his daughter that the applicant had assaulted him. The evidentiary value and admissibility of such a statement would be a matter for appreciation at the stage of trial.

7. Insofar as the recovery of the knife under Section 27 of the Evidence Act is concerned, such recovery, though relevant, would have to be tested at trial by way of proper evidence. It is a settled position in law that in cases based on circumstantial evidence, the chain of circumstances must be complete and must unerringly point to the guilt of the accused. At this stage, it cannot be conclusively said that the chain is complete. Moreover, it is to be noted that the applicant has been in custody since 1st April 2022 and charges have not yet been framed. There is no material to

indicate that the applicant has attempted to tamper with evidence or influence witnesses.

8. It is also pertinent to observe that continued incarceration of the applicant without progress in trial may amount to deprivation of personal liberty in violation of Article 21 of the Constitution of India. The Supreme Court in the cases of *Hussainara Khatoon v. State of Bihar* [(1980) 1 SCC 81], *Satender Kumar Antil v. CBI* [(2022) 10 SCC 51], and *Shaheen Welfare Association v. Union of India* [(1996) 2 SCC 616] has consistently held that the right to speedy trial is a fundamental right, and prolonged pre-trial detention without progress in trial may justify grant of bail in appropriate cases, even in serious offences.

9. On the overall consideration of the material placed on record, and the rival submissions made on behalf of both the applicant and the prosecution, this Court is of the considered opinion that the applicant has made out a case for grant of bail. It is observed that the applicant has been in custody for a considerable period and there is nothing on record to indicate that he is likely to abscond or is a flight risk. Moreover, it is not the case of the prosecution that the applicant has any criminal antecedents to his discredit.

10. A perusal of the charge sheet and the accompanying material reveals that while there may be a prima facie case, the quality of material presently available on record does not appear to be of such nature so as to justify continued pre-trial incarceration, particularly when charges are yet to be framed. It is also not

disputed that the trial has not commenced and, looking to the docket position of the trial Court, is unlikely to commence or conclude in the near future. Thus, keeping the right to personal liberty under Article 21 of the Constitution of India in view, the continued detention of the applicant would not be justified at this stage.

11. Taking into account the totality of the circumstances, including the period of custody already undergone by the applicant, the absence of prior criminal antecedents, and the fact that the trial is yet to commence, I am of the opinion that a case for grant of bail is made out.

12. However, the seriousness of the offence alleged cannot be overlooked. Therefore, while enlarging the applicant on bail, it would be appropriate and necessary to impose certain strict conditions so as to ensure that the applicant does not misuse the liberty granted to him, does not tamper with the evidence or attempt to influence the witnesses in any manner, and cooperates with the trial proceedings.

13. In view of the above discussion and legal position, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant, Mohammad Issaq Mohammad Ayyub Ansari, shall be released on bail in connection with Crim Register No. I-69 of 2022 registered with Nizampura Police Station, Bhiwandi, Thane for offences punishable under Sections 302, 307, 452, upon furnishing a Personal Bond of

₹25,000/- (Rupees Twenty-Five Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(c) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(d) The applicant shall report to Nizampura Police Station, Bhiwandi, District Thane, on the first Monday of every month, strictly between the hours of 10:00 a.m. and 12:00 noon, until further orders from this Court or the Trial Court.

(e) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

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

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

(h) 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.

(i) Needless to mention, any breach of the above

conditions shall entitle the prosecution to move for cancellation of bail.

14. The Bail Application stands disposed of.

(AMIT BORKAR, J.)