

Shabnoor

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

BAIL APPLICATION NO.3736 OF 2024

Afzal Sagir Ahmed Sayedd

... Applicant

V/s.

State of Maharashtra

... Respondent

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Mr. Siddharth Jaiswal, for the applicant.

Mrs. Shilpa G. Talhar, APP for the State – respondent.

Mr. Sopan Bhagwat Wadkar, PSI, Sakinaka Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973. The applicant is seeking his release on bail in connection with Crime Register No. 185 of 2024, registered at Sakinaka Police Station. The applicant has been arrested in relation to the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, for the alleged murder of one Suhaib.

2. As per the case of the prosecution, the informant, who is the real brother of the deceased Suhaib, has stated that on 11th February 2024, at about 14:41 hours, he received a phone call from one Mohammed Ameet. The said caller informed him that a

photograph had been sent to his WhatsApp. Upon checking the same, the informant identified the person in the photograph as his brother, Suhaib. He immediately rushed to Paramount Hospital, where he found that his brother had already been declared dead by the medical officer on duty. On making inquiry with persons who had accompanied Suhaib to the hospital, he came to know about the incident.

3. It is further the case of the prosecution that the deceased was walking near S. J. Studio on Khairani Road when he had an altercation with three unknown persons who were travelling on a motorcycle. It is alleged that as the motorcycle brushed past the deceased, a quarrel ensued, which escalated into a physical assault. The three persons allegedly started beating the deceased with their hands, and one of them is stated to have struck the deceased on the head with a paver block, causing him to fall unconscious on the spot. A crowd gathered thereafter. Based on the complaint lodged by the informant, an FIR came to be registered. The present applicant was arrested in the said crime. The applicant had earlier filed a bail application before the learned Sessions Court, which came to be rejected. Being aggrieved by the said order, the applicant has approached this Court for bail.

4. Learned counsel appearing on behalf of the applicant submitted that the material on record does not show that the applicant was one of the assailants. It is submitted that the statements of the eyewitnesses indicate that the incident involved a group of 11 individuals, some of whom were riding the motorcycle that allegedly brushed past the deceased. It is further

pointed out that except for the present applicant, others are stated to have been actively involved in the assault. No specific role is attributed to the applicant in the physical assault. There is no allegation that he used any weapon or delivered any blow to the deceased. The applicant has no past criminal antecedents and is a permanent resident. Hence, it is submitted that continued custody of the applicant is not warranted, and he be released on bail with appropriate conditions.

5. On the other hand, learned APP appearing for the State strongly opposed the bail application. It is submitted that the entire incident is captured in the CCTV footage, which clearly shows the involvement of the accused persons. The role of the two accused who assaulted the deceased is corroborated by the statements of eyewitnesses. It is further contended that the applicant's role is not distinct from the co-accused, as he was part of the group involved in the attack. It is argued that the assault was a joint act and the applicant's liability arises from the common intention shared by all accused. Hence, the applicant is not entitled to be released on bail at this stage.

6. I have considered the rival submissions and perused the material placed on record. Admittedly, the FIR does not specifically name the present applicant as one of the persons who delivered the fatal blow. The allegations in the FIR, as well as the statements recorded under Section 161 of Cr.P.C., indicate that the fatal blow was allegedly caused by one of the co-accused using a paver block. The CCTV footage, as per the prosecution, shows the incident, but the extent of involvement of the applicant therein is not made

clear at this stage. The role attributed to the applicant appears to be general in nature and not of direct assault.

7. There is no material on record to show that the applicant was armed or that he caused any injury to the deceased. Prima facie, his role appears to be of a passive presence or limited to being part of the group, and not of actual participation in the fatal assault. The doctrine of vicarious liability under Section 34 IPC requires cogent material to establish common intention. Whether such intention existed and whether the applicant shared the same with the main assailants, is a matter of trial and evidence. At this stage, in the absence of such material, the applicant's continued incarceration may not be justified.

8. It is also a matter of record that the applicant does not have any prior criminal record and there are no allegations of tampering with evidence or threatening witnesses. The charge sheet is stated to be filed. The applicant has roots in society and is not likely to abscond.

9. In view of the above discussion, the following order is passed:

(a) The Bail Application is allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. 185 of 2024 registered with Sakinaka Police Station. The applicant is charged for offences punishable under Section 302 read with Section 34 of IPC, 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 the Sakinaka Police Station, on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.

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

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

(g) 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.

10. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)