

AGK

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

BAIL APPLICATION NO.4340 OF 2024

Afzal Hussain Mohd. Mustakin

Shaikh @ Abdul

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Ms. Tanvi Gaikwad with Ms. Bhagyashree Gaikwad
i/by Mr. Ganesh Ubale for the applicant.

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

Mr. M.B. Sawant, PSI, Sewree Police Station, Mumbai,
is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 6, 2025

P.C.:

1. By the present application filed under Section 439 of the Criminal Procedure Code, 1973 (hereinafter referred to as “Cr.P.C.”), the applicant seeks regular bail in connection with Crime Register No.129 of 2022, registered with Sewree Police Station, Mumbai, for offence punishable under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”), which pertains to the offence of murder.

2. As per the case of the prosecution, on 13th April 2022, at about 7.12 a.m., the police received information that one person was found lying in an injured and unconscious condition in front

of Nagori Tea Hotel, on the footpath of Kuve Street, Darukhana, Sewree, Mumbai. Upon receipt of the said message, the mobile police van immediately reached the spot and shifted the injured person to KEM Hospital for medical assistance. However, he was declared dead before admission, around 9.00 a.m.

3. During the course of investigation, it was revealed that both the applicant and the deceased were engaged in the work of collecting scrap from garbage. On the intervening night of 12th and 13th April 2022, a quarrel allegedly took place between the two, during which the applicant is stated to have assaulted the deceased with an iron rod having a pointed curved edge, which is commonly used in rag-picking activities. The said blow was inflicted on the head of the deceased, which, as per the prosecution, proved to be fatal and led to his death. The applicant was subsequently arrested on 14th April 2022.

4. The learned advocate appearing for the applicant submitted that the alleged incident occurred around 3.30 a.m., and the applicant was arrested the following day. She contended that the statement of the person who allegedly saw the applicant with the deceased was recorded on 17th April 2022, by which time the postmortem report had already been obtained by the investigating agency. It is further submitted that the alleged recovery of the weapon and clothes was from an open space, which is accessible to others as well. It is pointed out that although charges have been framed, the trial has not yet commenced, and the prosecution has listed as many as 25 witnesses. Therefore, it is submitted that the trial is likely to take a long time and the applicant deserves to be

released on regular bail.

5. On the other hand, the learned APP has strongly opposed the bail application. She pointed out that the statement of eyewitness, recorded on 17th April 2022, clearly implicates the applicant and mentions that he was seen assaulting the deceased with the iron rod, which matches with the injuries described in the postmortem report. It is also submitted that the iron rod and blood-stained clothes were recovered at the instance of the applicant. Thus, the prosecution contends that there is strong *prima facie* material indicating the involvement of the applicant in the commission of the offence of murder, and therefore, the application for bail does not merit consideration and ought to be rejected.

6. On perusal of the charge-sheet along with statement of witness, and material on record, it appears that the prosecution's case is based on circumstantial evidence. The applicant appears to have been arrested on 14 April 2022. The person who allegedly saw applicant along with deceased, his statement was recorded on 17 April 2022. The applicant is arrested on 14 April 2022. Though charges are framed, the trial is yet to commence. The prosecution has cited 25 witnesses. It is, therefore, unlikely that the trial will be over in near future.

7. The apprehension raised by the prosecution that the applicant may not remain present for trial can be suitably addressed by imposing appropriate and stringent conditions at the time of granting bail. There is nothing on record to suggest that the applicant had attempted to abscond or evade the investigation

prior to his arrest. Therefore, with adequate safeguards, the applicant's presence during trial can be secured. In the overall facts and circumstances, I am satisfied that the applicant has made out a prima facie case for grant of regular bail.

8. It is also relevant to take into account that the applicant is a daily wage earner, engaged in collecting scrap for survival, and belongs to an economically weaker section of society. Insisting on a high surety amount may frustrate the very relief granted. Hence, in the interest of justice, the applicant deserves to be released on cash bail of a reasonable and lower amount, keeping in mind his financial condition.

9. 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.129 of 2022 registered with Sewree Police Station, Mumbai for offences punishable under Section 302 of the IPC, upon furnishing a cash surety of Rs.5,000/- (Rupees Five Thousand Only);
- iii) Within a period of 12 weeks from the date of release of the applicant on regular bail, he shall furnish 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 Sewree Police Station once in every month, specifically on the 1st each Monday, between 10:00 a.m. and 12:00 noon, until further orders.

(c) 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.

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

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

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

10. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)