

AGK

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

BAIL APPLICATION NO.5396 OF 2024

Dharmesh Nitin Shah ... Applicant

V/s.

The State of Maharashtra ... Respondent

ATUL
GANESH
KULKARNI
Digitally signed by
ATUL GANESH
KULKARNI
Date: 2025.07.31
18:37:55 +0530

Mr. Pranil Sonawane for the applicant.

Ms. Mahalakshmi Ganapathy, APP for the State.

V. B. Ghorpade, ACP and Bhosle, ASI, Crime Branch
Thane City are present.

CORAM : AMIT BORKAR, J.

DATED : JULY 31, 2025

P.C.:

1. By the instant application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant is seeking regular bail in connection with Crime No. 377 of 2020 registered with Mahatma Phule Chowk Police Station. The applicant is facing serious charges for offences punishable under Sections 302, 506(2), 34 and 120-B of the Indian Penal Code, 1860, along with Sections 3, 25 and 27 of the Arms Act, Sections 37(1) and 135 of the Maharashtra Police Act, and Sections 3(1)(i), 3(2), and 3(4) of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA Act).

2. The prosecution story, in brief, is that on 31st July 2020, at around 5:00 p.m., the complainant had gone to the office of the

deceased Jignesh Thakkar, located at Suyash Plaza, Kalyan, in connection with a discussion regarding a land transaction. In the meantime, some friends of the deceased also came to the office. Around 9:45 to 10:00 p.m., they shut the office and began to leave. At that time, the deceased received a phone call, following which he walked toward the corner of the building. It is at this juncture that the present applicant, Dharmesh @ Nanu Shah, along with co-accused Jaipal @ Japan Bhansingh Dulgaj, is stated to have come to the spot and started speaking with the deceased. Since they were childhood friends, the complainant did not find anything suspicious.

3. Suddenly, the complainant heard the sound of gunfire and saw both the applicant and the co-accused holding pistols and firing multiple rounds at the deceased. It is alleged that the accused fired four to five rounds, as a result of which the deceased collapsed. The accused persons then threatened the complainant and others present at the spot that if anyone attempted to intervene, they too would be shot. Thereafter, the applicant, the co-accused, and two other unknown persons fled the scene. The deceased was immediately rushed to Fortis Hospital, where he was declared dead on arrival.

4. The main submission on behalf of the applicant is that he has been in custody since 13th August 2020, and therefore, considering the long period of incarceration, he is entitled to be released on bail. Learned counsel for the applicant placed reliance on the recent judgments of the Supreme Court in Siddhant @ Sidharth Balu Taktode vs. State of Maharashtra & Anr., 2024 SCC

OnLine SC 3798, and *Javed Gulam Nabi Shaikh vs. State of Maharashtra & Anr., (2024) 9 SCC 813*, to contend that continued detention without trial offends the constitutional right to life and liberty guaranteed under Article 21 of the Constitution of India.

5. It is further submitted that co-accused persons in the present case have been granted bail by the learned Sessions Court, and the trial is yet to commence in earnest. Learned counsel, therefore, urges this Court to apply the principle of parity, and to release the applicant on regular bail, subject to appropriate conditions.

6. On the other hand, learned APP strongly opposed the present bail application, contending that the offences registered against the applicant are extremely serious in nature, including Section 302 of the Indian Penal Code, and have led to invocation of the stringent provisions of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA). It is alleged that the applicant, along with the co-accused, opened fire on the deceased with intent to kill, and five bullets were discharged, targeting vital parts of the body, including the chest, abdomen, and hand. Apart from the complainant, there are six other eyewitnesses who have clearly seen the incident and are likely to support the prosecution case during trial.

7. The investigation has further revealed, as submitted by learned APP, that the applicant is not merely an individual accused in the crime, but is a gang leader who heads an organised crime syndicate operating with the help of his associates who are also arrayed as co-accused in the present case. It is alleged that the

murder of the deceased was a result of a conspiracy hatched by the applicant himself, in active coordination with his gang members, a day prior to the incident, i.e., on 30th July 2020. According to the prosecution, this is supported by electronic evidence, including CCTV footage and mobile tower location data, which allegedly places the applicant at or near the scene and reflects his involvement in the planning and execution of the offence.

8. It is also submitted that the applicant has a criminal antecedent, and was earlier arrested in Crime Register No. 351 of 2008, in which he was released on bail. However, despite being enlarged on bail in that matter, the applicant is alleged to have committed the present offence while out on bail, i.e., on 31st July 2020. In view of this, the learned APP placed reliance on the statutory bar under Section 21(5) of the MCOCA, which provides that where the accused is shown to have committed an offence punishable under the Act after being released on bail in a previous case under the same Act, such person shall not be released on bail again. The learned APP also invited attention to the observations of the Special Court in the present case, reflecting the manner in which the accused persons have been obstructing the progress of the trial. The said order records as follows:

“.... The trial is pending for framing of charge and it is noticed that the accused persons, on one or the other ground, are creating hurdles in framing of charge. It is also noticed that the accused are approaching the Hon’ble High Court for seeking bail mainly on the ground of long incarceration. It needs to be pointed out that the accused, on

one part, are causing delay and, on the other hand, are seeking bail on the ground of long incarceration as well as no further development in trial. In short, the accused are taking advantage of their own defaults...”

9. In continuation, learned APP submitted that there is a deliberate attempt on the part of all accused persons, including the applicant, to stall the trial proceedings by repeatedly seeking adjournments, and then to claim long incarceration as a ground for bail, though they themselves are responsible for the delay. It is argued that this is part of a litigation strategy, consciously adopted to defeat the object of a fair and speedy trial. As regards the argument of parity, the learned APP submits that such principle cannot be applied blindly, particularly in the case of the present applicant, who is alleged to be the gang leader, and against whom as many as 15 criminal cases are registered, apart from his direct and active role in the present murder case. Therefore, it is submitted that the case of the applicant stands on a different footing from that of other co-accused, and no parity can be claimed. Accordingly, the learned APP prayed for rejection of the bail application.

10. I have considered the rival submissions advanced by the learned counsel for the applicant and the learned APP. I have also gone through the case papers, including the statements of eyewitnesses, the CCTV footage, and other electronic records collected during the investigation. There is no dispute that the incident in question resulted in the cold-blooded murder of the deceased, who was shot multiple times in a premeditated attack.

The manner in which the offence was committed—firing five rounds at close range, clearly indicates a high degree of criminal intent and planning.

11. It has come on record that apart from the complainant, six other witnesses have seen the incident, and the prosecution has also collected CCTV footage and mobile location data, which prima facie supports the allegation of the applicant's direct involvement in the crime. The prosecution has further alleged that the applicant is a gang leader involved in organised crime, and the murder was the result of a conspiracy hatched by him along with his associates.

12. The material placed on record clearly shows that the applicant was earlier released on bail in connection with Crime No. 351 of 2008. However, despite being granted the liberty of bail by the Court in that earlier case, he is now alleged to have committed a fresh and more serious offence on 31st July 2020, which is the subject matter of the present case. This act of committing another offence while already on bail is not a mere coincidence or lapse in judgment, it reveals a pattern of repeated criminal conduct and a disregard for the law and the authority of the courts.

13. This conduct directly attracts the bar under Section 21(5) of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA). This provision lays down in clear terms that if a person, after being released on bail in a case involving an offence under the MCOCA, commits another offence punishable under the said Act, he shall not be entitled to be released on bail again. The language of the statute is mandatory and not discretionary, and is intended to

prevent habitual offenders or persons involved in organised crime from misusing the bail process to repeat similar serious offences.

14. The object behind enacting such a bar is to protect society from individuals who are part of organised crime syndicates and who, if released, may continue to indulge in criminal activities and may also influence witnesses, tamper with evidence, or frustrate the course of justice. The present case is not an isolated incident. The applicant is alleged to be the leader of a criminal gang, and is facing serious charges of murder, criminal conspiracy, and offences under the Arms Act and the MCOCA. Therefore, the statutory embargo under Section 21(5) must be given full effect, and cannot be lightly disregarded or diluted on equitable considerations.

15. In view of the above, this Court cannot overlook the specific bar imposed by law, and no exceptional circumstances are made out by the applicant to override the prohibition contained in the statute. Hence, the contention of the applicant seeking bail despite the application of Section 21(5), is not legally sustainable.

16. Furthermore, the observations recorded by the learned Special Court, which are placed before this Court, clearly point towards a pattern of deliberate delay tactics being adopted by the accused persons, including the present applicant. The Special Court has noted that the trial is still pending even at the stage of framing of charge, and that on multiple occasions, adjournments have been sought on frivolous or non-substantial grounds, such as the unavailability of counsel or seeking time to file replies.

17. This conduct is not accidental or isolated. It appears from the record that the accused persons are consciously coordinating to stall the proceedings, thereby obstructing the judicial process. What is more concerning is that after deliberately delaying the trial, the accused are now turning around and seeking bail on the ground that they have been in custody for a long time and the trial has not made progress. Such conduct clearly amounts to taking advantage of one's own wrong, which is impermissible in law.

18. It is a settled principle that a person who contributes to the delay in the proceedings cannot be allowed to benefit from that delay, especially when it is being used as a ground for seeking bail under Section 439 of the Code of Criminal Procedure. The discretion of this Court under Section 439 is equitable and judicial, and must be exercised in accordance with the larger interest of justice. If the accused are permitted to misuse the judicial process by creating delay and then seeking bail on that very ground, it would amount to encouraging abuse of the process of law.

19. Therefore, this Court finds merit in the submission of the learned APP that the strategy adopted by the accused persons is to frustrate the trial and eventually seek release by citing long incarceration. Such tactics not only delay justice but also undermine the credibility of the criminal justice system. Hence, while considering the bail application, this Court cannot ignore the deliberate obstruction caused to the trial proceedings, which clearly weighs against the grant of bail to the present applicant.

20. As far as the plea of parity is concerned, I am of the view that it does not apply in the present case. The applicant is specifically alleged to be the gang leader, with 15 prior cases registered against him, and has been attributed a central role in the present conspiracy and execution of the crime. His case stands on a distinct and more serious footing than that of other co-accused who may have been granted bail. The Supreme Court has consistently held that parity cannot be invoked where the role, antecedents, and position of the accused are materially different from that of co-accused.

21. Considering the gravity of the offence, the role attributed to the applicant, the seriousness of the charges under MCOCA, his criminal antecedents, and the statutory bar under Section 21(5), I am of the opinion that the applicant does not deserve to be released on bail at this stage. The possibility of tampering with evidence or threatening witnesses also cannot be ruled out if the applicant is released on bail, given his past conduct and position in the alleged crime syndicate.

22. Accordingly, the application for bail is rejected.

(AMIT BORKAR, J.)