

Ajay

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

CRIMINAL BAIL APPLICATION NO. 06 OF 2025

Salman Jakriya Maulavi

Applicant /
.. Accused No.2

Versus

The State of Maharashtra

.. Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 4549 OF 2024

Abdulla Nadir Moulvi

Applicant /
.. Accused No.3

Versus

The State of Maharashtra

.. Respondent

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- Mr. Abdul Rahim Bukhari, Advocate for Applicant in BA No.06 of 2025.
- Mr. Ashok Mundargi, Senior Advocate alongwith Mr. Meghdeep Oak, Advocate for Applicant in BA No.4549 of 2024.
- Ms. Mahalakshmi Ganapathy, APP for Respondent – State in BA No.06 of 2025.
- Ms. Rajeshree V. Newton, APP for Respondent – State in BA No.4549 of 2024.
- Ms. Huda Sayyad a/w. Ms. Sabiha Sayed and Ms. Gausiya Ansari i./by Jurisman Legal for Intervener in BA No.06 of 2025.
- Mr. Firoz Usman a/w. Ms. Namrata Shettigar i./by Jurisman Legal for Intervener in BA No.4549 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 22, 2025.

P.C.:

1. Heard Mr. Bukhari, learned Advocate for Applicant in BA No.06 of 2025; Mr. Mundargi, learned Advocate for Applicant in BA No.4549 of 2024; Ms. Ganapathy, learned APP for Respondent – State

in BA No.06 of 2025; Ms. Newton, learned APP for Respondent – State in BA No.4549 of 2024; Ms. Sayyad, learned Advocate for first informant in BA No.06 of 2025 and Mr. Usman, learned Advocate for first informant in BA No.4549 of 2024.

2. This is group of two Bail Applications filed under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.28 of 2024 registered with Kulgaon Police Station for offences under Sections 302, 364(2), 201 read with Sections 120-B and 34 of the Indian Penal Code, 1860.

3. There are total 3 Accused in the crime. Applicants before me are arraigned as Accused Nos.2 and 3 in the said crime. According to prosecution case, Accused No.1 is the principal conspirator who has committed the crime of having abducted a twelve year old boy, son of the first informant living in his neighbourhood and committed his murder. In so far as role attributed to Accused Nos.2 and 3 is concerned, prosecution case is that they aided and assisted Accused No.1 in commission of the crime. Case of prosecution against Accused Nos.2 and 3 *prima facie* is based on circumstantial evidence as emanating from the record and more specifically based on two witness statements which have been recorded. In so far as case of prosecution against principal Accused No.1 is concerned, it is based on the last seen theory with the victim and circumstantial evidence.

4. The facts in the present case are narrow. On 24.03.2024 at about 08:30 p.m. after the evening Ramzan prayers, victim boy who had gone to attend the prayers alongwith his father in the village mosque was not traceable. According to prosecution case, he on his own ventured out and was seen in front of an ice-cream shop opposite the mosque seated next to Accused No.1 having an ice-cream. Record shows that Accused No.1 lived in the vicinity of the residence of first informant and knew the victim by name. According to prosecution case after having the ice-cream, Accused No.1 asked the victim boy to accompany him and both of them left in the direction of the house of Accused No.1. Statement of the ice-cream vendor and a neighbouring vadapav vendor is recorded by prosecution having observed the above. Both vendors have in their statements stated that after Accused No.1 left with the victim boy, they saw Accused Nos.2 and 3 who were standing on the road follow them in the same direction.

5. In so far as case of prosecution against the principal Accused No.1 is concerned there are two other circumstances pleaded by prosecution namely Accused No.1 having purchased a gunny bag in which the body of victim boy was disposed off by him over a compound wall behind his house and he having purchased a sim-card three months prior to the date of incident which was used by him for making a ransom call to the first informant. In so far as Accused Nos.2 and 3 are concerned, the case of the prosecution rests as delineated

herein above.

6. Mr. Bukhari, learned Advocate appears for Applicant - Accused No.2 whereas Mr. Mundargi, learned Senior Advocate appears for Applicant - Accused No.3. Their submissions are orientated on same lines. Hence for brevity sake they are not delineated separately. Both learned Advocates have taken me through the statements of prosecution witnesses namely the ice-cream vendor and vadapav vendor appended at page Nos.145 and 148 of Bail Application No.06 of 2025 and would submit that the case of prosecution against Applicants is solely based on circumstantial evidence on the basis of these two witness statements and there is no other circumstance emanating from prosecution case to show nexus of Applicants with the incident / crime in question. They would fairly submit that since Accused No.1 was having friendship with Accused Nos.2 and 3 and both Accused Nos.2 and 3 were also spotted standing on the road outside the mosque on the date of incident when Accused No.1 lured and took alongwith him the victim boy whereafter Accused Nos.2 and 3 followed them in the same direction this is the only *prima facie* material for indictment against present Applicants. They would submit that in that view of the matter, role attributed to Applicants by prosecution being restricted to the extent delineated above, they deserve to be enlarged on bail. They would submit that Applicants are incarcerated for the past more than one year, however considering

case of prosecution against the present Applicants, they may be released on bail by this Court.

7. Ms. Ganapathy and Ms. Newton, learned APPs appearing for the prosecution in both matters have vehemently opposed the Bail Application and would argue that gravity of the crime is such that both Applicants do not deserve to be enlarged on bail. They would submit that circumstantial evidence placed on record if *prima facie* examined would show role of the Accused Nos.2 and 3 was complicit in committing the crime in question alongwith the principal conspirator Accused No.1. They would submit that the fact that both Applicants followed Accused no.1 and the victim boy in the same direction is *prima facie* evidence of the fact that they participated in the crime alongwith Accused No.1. They would submit that since a gruesome act was committed leading to the death of the 12 year old young boy, the act is unpardonable and therefore Applications for bail be rejected.

8. Ms. Sayyad, learned Advocate appearing for the Intervener – first informant in Bail Application No. 6/2025 has persuade me to grant leave to appear and address the Court. I have permitted her to do so. She would at the outset strongly submit that the conduct and antecedents of the Applicant – Accused No. 2 needs to be taken into account by Court in view of the gruesome nature of the crime in question. She would submit that there exists one antecedent registered

against Applicant under Section 354 of IPC and that the Applicant is allegedly a part of the gang led by Accused No. 1. She would submit that though investigation has been completed, there exists an inherent lacuna therein inasmuch as prosecution has failed to investigate the aspect relating to the ransom call received by first informant on the date of crime. She would submit that on the date of incident when victim was lured and taken away by Accused No. 1, first informant i.e. father of victim received a ransom call, details of which were given by him to the investigating authorities. That ransom call was received from the phone number, the sim card of which was purchased by Accused No. 1 three months prior to the date of crime. She would submit that the incident occurred during the holy month of Ramzan after the evening prayer hours. Witness statements *prima facie* show that Applicant along with Accused No. 3 followed Accused No. 1 and victim and they all were instrumental in committing the crime. She would submit that witness statement appended at page No. 155 of the Application filed by Applicant will show movement of Applicant on the date of incident and such circumstantial evidence is *prima facie* enough for prosecution to show complicity and involvement of Applicant in the crime. She would submit that the crime committed by Accused persons is of a very heinous nature against the Society at large and therefore the Bail Court should not treat such a crime leniently. She would submit that Applicant is a known friend of Accused No. 1

and he along with Accused Nos. 1 and 3 were instrumental in the conspiracy and execution of the crime in question. She would submit that receiving of the ransom call was in furtherance of conspiracy to kill the victim in a cold blooded manner which the Court should not lose sight of. She has drawn my attention to the decision of the Supreme Court in the case of ***Prasanta Kumar Sarkar v. Ashish Chatterjee***¹ and persuaded the Court to consider various factors like whether there is any *prima facie* or reasonable ground to believe that Accused had committed the offence, nature and gravity of the accusation, severity of punishment, danger of Accused absconding or fleeing if released on bail and most importantly, the character, behaviour, means, position and standing of the Accused persons. She has expressed a serious apprehension that if released on bail, Applicant may tamper with prosecution witnesses and evidence and has further submitted that release is likely to disturb public order and instill a sense of fear and insecurity in the mind of the first informant and the victim's family.

9. Mr. Usman, learned Advocate for Intervener - victim in BA No. 4549/2024 has also persuaded the Court to grant leave to address in this Application. Before I advert to the submissions made by him, I would like to state that it is the duty of the learned Advocates appearing at the bar to make their submissions and after making the

¹ (2010) 14 SCC 496

said submissions leave the matter to Court for passing orders. The submissions advanced by Ms. Sayyad are also supplemented by written submissions of arguments which are taken on record. *Prima facie* the impression given to Court by intervenor's Advocates that in any event the bail Applications should be rejected. It is the duty of the Court to pass an appropriate order after hearing the parties which Court shall do and consider the *prima facie* material on record. If the family members of first informant have any other apprehension, fear or uncertainty as pleaded by learned Advocates, they are free to approach the law enforcement agencies or take appropriate steps as available to them in law in accordance with law.

10. This brings me to the submissions made by Mr. Usman. He would draw my attention to four statements recorded by the prosecution; at page No. 39 – confessional statement of Accused No. 3, page No. 119 – statement relating to purchase of sim card by Accused No.1, page No. 145 – statement of vadapav vendor and page No. 148 – statement of the ice-cream vendor. He would vehemently submit that in view of confessional statement of Accused No. 3 appended at page No. 39, it is clear that he participated in the crime along with Accused No. 1 in committing murder of victim and therefore no bail should be granted to him. He would submit that in view of his confessional statement he has committed the crime and would vehemently and passionately submit that releasing Applicant on bail

would be detrimental to the Society at large. He would make this submission on the premise that after the incident had occurred, for two months none of the children in the village came out of their residences due to fear and uncertainty. He would submit that releasing the Applicant on Bail would also lead to law and order problems. He would submit that circumstantial evidence and the witness statements identifying Accused person having followed Accused No. 1 and victim boy on the date of incident is *prima facie* evident of his complicity in the crime and therefore no leniency should be shown to him. He would submit that conspiracy of Applicant is writ large in the present crime. He would submit that Applicant along with Accused No. 2 was instrumental in disposal of the gunny bag containing body of victim in the company of Accused No. 1 and therefore it would be inconclusive to infer that Accused No. 1 alone carried out the crime. He would therefore persuade the Court to reject the Bail Application of Applicant.

11. I have heard the learned Advocates at the bar for the respective parties and with their able assistance perused the record of the case.

12. *Prima facie* the case of prosecution is that Accused No. 1 is the person who was seen by the witness namely ice-cream vendor to have been sitting along and talking with the victim boy outside his

shop on the bench (बाकडा) while the victim was having the ice cream. Thereafter the witness has stated that he saw Accused No. 1 asking the victim boy to accompany him after he finished the icecream and both of them left together in the direction of the house of Accused No. 1. Thereafter he has stated that at that time Accused Nos. 2 and 3 were standing on the road and he saw them following Accused No. 1 and the victim boy in the same direction. This is only circumstantial evidence brought forth on record by prosecution to allege conspiracy and complicity of Accused Nos. 2 and 3 in the crime. On *prima facie* examination of the witness statements, it is seen that Accused No. 1 was the person who not only spoke to the victim but was also seen sitting next to him and was thereafter seen leaving along with him in the direction of his house. Insofar as Accused Nos. 2 and 3 are concerned, there is nothing incriminating on record to *prima facie* indicate their direct nexus with the alleged crime in question. Case of the prosecution / first informant which is primarily argued by learned Advocates is that Accused Nos. 2 and 3 were close friends of Accused No. 1 and they hatched a conspiracy to eliminate victim boy due to animosity between Accused No. 1 and family of the victim boy who were neighbours. When the said statement is made with respect to the motive insofar as the role of Accused Nos. 2 and 3 is concerned, there has to be some *prima facie* material on record to show their nexus with the crime in question. On going through the record of the case, *prima*

facie the same is not seen by Court. In that view of the matter, considering role attributed to Accused Nos. 2 and 3, I am of the opinion that Accused Nos. 2 and 3 have made out a case for grant of bail . Needless to state that the apprehension expressed by the learned Advocates for first informant can be addressed by imposing appropriate stringent conditions against Accused Nos. 2 and 3.

13. In view of the above *prima facie* observations, both the Bail Applications are allowed on the following terms and conditions:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25000/- each with one or two sureties in the like amount;
- (ii) Before their actual release from jail, Applicants shall furnish on Affidavit/undertaking details of their addresses where they propose to reside after their release from jail to the concerned Police Station and also to the trial Court;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark their presence. If the first Tuesday of the said month falls

on a holiday and / or non Court working day, the Applicants shall mark presence on the next working day;

- (v) Applicants shall co-operate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if they do so, it will entitle the prosecution to apply for cancellation of this order;
- (vi) Applicants shall not enter the territorial jurisdiction of Village Kulgaon, Thane until completion of the trial save and except for attending the IO for attendance and Court proceedings;
- (vii) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

14. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any

observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

15. Both the Bail Applications are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

HARSHADA
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SAWANT

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by HARSHADA
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