

Shabnoor

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

BAIL APPLICATION NO. 55 OF 2025

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2025.07.22
16:33:26 +0530

Arif Mohammad Salim Sahikh @ Fuddu ... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Sanjeev Kadam, Senior Advocate, Varsha Thorat, Mitali Varma, Omar Hashmi, Suhail Shariff i/b Falcon Legal, for the applicant.

Mrs. Rajashree V. Newton, APP for the State – respondent.

Mr. Nitin Palande, PSI, Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 22, 2025

P.C.:

1. The present bail application is preferred by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release in connection with Crime Register No. 275 of 2024 registered with Trombay Police Station. The applicant has been arrested in connection with offences punishable under Sections 302 (murder), 504 (intentional insult to provoke breach of peace), 212 (harbouring offender), and 201 (causing disappearance of evidence) of the Indian Penal Code, 1860. In addition to the above, offences under Sections 37(1)(a), 135, and 142 of the Maharashtra Police Act have also been invoked.

2. The prosecution case, in brief, is that on 16th June 2024, the complainant and his brother Hamza (deceased) were at home, as it was a holiday. Around 1:30 p.m., Hamza left home after having breakfast. Thereafter, the complainant received a call from his brother-in-law, Arif Mirza, informing him that Hamza had been attacked with a knife and was shifted to Shatabdi Hospital in an injured condition. The complainant, along with his mother, immediately rushed to Shatabdi Hospital, where the attending doctor declared Hamza dead at around 2:20 p.m.

3. At the hospital, one Mohammad Ghaus Zakaria Shaikh, who was present, narrated the incident to the complainant. He informed that he, Hamza, and two others, namely Mohammad Nasir and Mohammad Zahid, were sitting near the dormitory behind the gym at Lal Maidan, when one Mohammad Noor alias Penda arrived and began abusing them. When they tried to pacify him, he picked up an empty glass bottle lying nearby and struck it on his own head. A shard from the broken bottle hit a small child named Mohammad Siddique, who was playing nearby, injuring his nose and causing it to bleed. Immediately thereafter, Mohammad Noor @ Penda took out a knife from his pant pocket and stabbed Hamza twice in the chest. Hamza collapsed on the ground. The assailant then fled from the spot. Subsequently, Abdul Ziauddin and Mohammad Aqib rushed Hamza and the injured child Mohammad Siddique to Shatabdi Hospital in an autorickshaw. Arif was also informed. Thereafter, the complainant approached Trombay Police Station and lodged a formal complaint.

4. It appears that the applicant had earlier approached the learned Sessions Court for bail. However, his application was rejected. Hence, he has approached this Court by filing the present bail application.

5. Learned Advocate appearing for the applicant submitted that the only role attributed to the applicant is that he provided shelter to the main accused after the incident of murder had already taken place. It is submitted that the applicant has not participated in the act of murder, nor was he present at the scene of offence. It is contended that, at the highest, the allegation against the applicant falls under Section 201 of IPC, i.e., causing disappearance of evidence. The applicant was arrested on 27th June 2024. The investigating agency has completed investigation and charge-sheet has already been filed. Therefore, his continued custody is not warranted. It is further submitted that though the applicant has one antecedent of an offence under Section 334 IPC, it is a minor offence and should not come in the way of granting bail in the present case. On these grounds, the learned counsel prayed that the applicant be enlarged on bail.

6. On the other hand, the learned APP vehemently opposed the grant of bail. It was submitted that the role of the applicant is not merely confined to harbouring the main accused, but also extends to tampering with crucial evidence, inasmuch as he allegedly destroyed the blood-stained clothes of the main accused in order to screen him from legal punishment. The learned APP also pointed out that the applicant has a criminal antecedent involving bodily harm under Section 334 IPC, which reflects adversely on his

criminal tendencies. Hence, it was urged that the applicant is not entitled to be released on bail and the application be rejected.

7. Upon perusal of the material placed on record and considering the submissions made by both sides, certain facts emerge clearly. The applicant is not the principal accused who is alleged to have committed the brutal assault resulting in the death of the deceased Hamza. The specific role attributed to the applicant, as per the prosecution case, is that of providing shelter to the main accused after the commission of the offence and allegedly destroying blood-stained clothes of the assailant. Thus, the accusations against the applicant fall primarily under Sections 201 and 212 of the IPC, i.e., for harbouring the accused and causing disappearance of evidence.

8. It is not the case of the prosecution that the applicant was present at the spot when the incident took place or that he had any prior knowledge of the intention of the principal accused to commit the said offence. The overt act of murder was already complete by the time the applicant allegedly rendered assistance to the main accused. Therefore, the involvement of the applicant is only post-occurrence and is not directly connected to the homicidal act itself.

9. Further, it is informed that the investigation in the present case is complete and the charge-sheet has been filed. The applicant has been in custody since 27th June 2024. No recovery is stated to be pending at his instance. In such circumstances, the continued pre-trial detention of the applicant may not serve any useful

purpose. The apprehension of the prosecution regarding tampering with evidence can be addressed by imposing suitable conditions.

10. As regards the applicant's antecedent under Section 334 IPC, the same appears to be a solitary incident involving a minor offence, and on its own, may not be sufficient to deny bail in the present case, particularly when the role attributed in the present crime is limited and not directly linked to the commission of the murder.

11. Considering the overall circumstances, the nature of allegations, the period of custody, and the fact that the trial may take considerable time to conclude, this Court is of the opinion that the applicant deserves to be released on bail, subject to conditions to ensure his availability for trial and to prevent any tampering with the prosecution evidence.

12. Hence, the following order :

(i) The Bail Application is allowed.

(ii) The applicant, shall be released on bail in connection with Crime Register No. 275 of 2024 registered with Trombay Police Station for offences punishable under Sections 302, 504, 212, 201 of IPC, Sections 37(1)(a), 135, 142 of the Maharashtra Police Act, 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:

(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 Trombay Police Station, Mumbai once in three months 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.

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

(AMIT BORKAR, J.)