

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

BAIL APPLICATION NO. 137 OF 2025

Imran @ Babu Abdul Rehman Shaikh ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Husen Shaikh, a/w Rumman Shaikh and Bilal Shaikh,
for the Applicant.
Mr. P. P. Devkar, APP for the State – Respondent.

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**CORAM: N. J. JAMADAR, J.
DATED: 4th FEBRUARY, 2025**

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in C.R. No.573 of 2023 registered with Byculla Police Station, Mumbai, for the offences punishable under Sections 120(B) and 307 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”) and Sections 3 and 5 of the Indian Arms Act, has preferred this application to enlarge him on bail.
3. The first informant lodged a report with the allegations that on 18th November, 2022 on the night intervening 17th and 18th November, 2023 at about 3.00 a.m., while the first informant and his friends were sitting in front of Welcome

Dresses, Mazgaon, two unknown persons came thereat riding a motor-scooter. The pillion rider was wearing a mask. The pillion rider took out a pistol from his waist and aimed it at the first informant and his friends. As the first informant and his friends started to run away, the pillion rider fired at them. The bullet stuck the concrete block on the steps to the said shop. The first informant sustained laceration on the third toe of right feet. Those unknown persons fled away towards Mustafa Bazar.

4. The investigation revealed that at the instance of Nisar Ahmed Shaikh @ Papu, the absconding accused, Ahmed Shaikh (A3) had fired at the first informant and his friend. The applicant was riding the motor-scooter, on which Ahmed Shaikh (A3), the shooter, was the pillion rider. Aurangzeb @ Sheru Tahir Khan (A2) had supplied the firearm.

5. Mr. Bilal Shaikh, the learned Counsel for the applicant, would urge that the applicant has been roped in on the basis of suspicion. There is a serious discrepancy as regards the description of the motor-scooter, which the assailants were riding. The first informant and the witnesses have stated that the assailants were riding a blue motor-scooter. However, the scooter, which was allegedly recovered pursuant

to the discovery made by the applicant, was a black Suzuki Aviator and not blue. Moreover, the statement of Javed Shaikh, the owner of the said motor-scooter, indicates that he had collected the said scooter from a spot where the applicant had allegedly left the same. In that view of the matter, the scooter could not have been recovered pursuant to the alleged discovery made by the applicant. Apart from said evidence of discovery, there is no credible material to connect the applicant with the alleged offences.

6. The learned APP resisted the prayer for bail. Attention of the Court was invited to a panchnama of the images in the CCTV footages and the statements of the first informant and the witnesses. It was submitted that the applicant has been identified as the person, who was wearing a red T-shirt and riding the said motor-scooter. Having regard to the nature and gravity of the offence, the applicant does not deserve to be enlarged on bail, urged the learned APP.

7. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 and the documents annexed with it.

8. *Prima facie* it appears that the persons, who had fired at the first informant and his friend were known to the first

informant and the witnesses. It is also necessary to note that both the shooter as well as the person, who was riding the scooter, were wearing the mask. It does not appear that the witnesses have identified those persons on the basis of their features. On the contrary, the assailants were identified on the basis of the clothes they were wearing and the motor-scooter they were riding.

9. As noted above, there is *prima facie* discrepancy in the colour as well as the make of the scooter, which the assailants were allegedly riding. In such circumstances, whether the discovery of the scooter can be fastened to the applicant would be a matter for adjudication at the trial. The statement of the owner of the scooter that he had brought back the scooter from the place where it was allegedly parked by the applicant, *prima facie*, renders the evidence of discovery a matter for appraisal at the trial. Since the images in the CCTV *prima facie* appear to have been captured by CCTV located at a considerable distance from the scene of occurrence and the identification of the applicant as the rider of the motor-scooter hinges on the identification based on the images captured by CCTV, a *prima facie* case for exercise of discretion is made out.

10. The investigation is complete. Charge-sheet has been lodged. The applicant has been in custody since 22nd November, 2023. Trial will take considerable time.

11. The applicant has antecedents; two of the crimes were registered at Ghatkopar Police Station in the year 2011 and 2013 and the third was registered at Kashimira Police Station vide CR No.700 of 2023 for the offence punishable under Sections 307, 384, 386, 120(B) read with Section 34 of the Indian Penal Code, 1860 and Section 3 read with Section 25 of the Arms Act. Though the antecedents of the applicant deserve to be taken into account, yet they do not appear to be of such nature as to disentitle the applicant from the relief of bail. I am, therefore, inclined to allow the application subject to stringent conditions.

12. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in C.R. No.573 of 2023 registered with Byculla Police Station, Mumbai, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (iii) The applicant shall mark his presence at the Byculla

Police Station between 10.00 am. to 12.00 noon, on first Monday of every alternate month, for the period of three years or till conclusion of the trial, whichever is earlier.

- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) The applicant shall surrender his Passport before the Court of Session. If the applicant does not hold the Passport, the applicant shall file an affidavit to that effect.
- (viii) The applicant shall not leave the country without prior permission of the Court of Session.

- (ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]