

Shabnoor

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

BAIL APPLICATION NO. 232 OF 2025

Rupesh Jayant Vairale

... Applicant

V/s.

State of Maharashtra

... Respondent

Mr. Simmy Sebastian a/w Ms. Kaushalya Patil i/b Mr. Amrish Salunke, for the applicant.

Mrs. Shilpa G. Talhar, APP for the State – respondent.

Mr. Sulke, PSI, RCF Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 8, 2025

P.C.:

1. The present bail application has been filed by the applicant under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, seeking his release on bail in connection with Crime Register No. 438 of 2024, registered with RCF Police Station. The applicant has been booked for serious offences punishable under Sections 103(1), 109, 61(2), 115(2), 352, 351(3), 189(2), 191(3), 190 of the Bhartiya Nyay Sanhita, 2023. Apart from this, offences under Sections 4 and 25 of the Indian Arms Act and Sections 37(1)(A) and 135 of the Maharashtra Police Act have also been invoked.

2. As per the prosecution case, there was an initial quarrel in April 2024 involving one Prakash Dhende (brother of the

complainant) and three other persons, namely Rohit Yadav, Siddharth Kamble, and Santosh Jagtap. In relation to that quarrel, a complaint was lodged at the RCF Police Station. Thereafter, the complainant had gone to the house of Sitaram (brother of Santosh) located at Chembur, Mumbai, to enquire about the said complaint. However, during this visit, a fresh altercation took place between the complainant and Sitaram, resulting in a complaint being filed against the complainant and one Vikas. As a result of this subsequent incident, the complainant was arrested. The record also indicates that following this altercation, the complainant had cut off all communication with Sitaram and his family.

3. The crucial incident giving rise to the present case occurred on 21st July 2024, around 9:30 to 10:00 p.m., near Building No. 6 at Chembur. It is alleged that Sitaram, Suresh, and their associates — Rupesh, Sagar, Sudhakar, and another Rupesh — collectively attacked Siddharth Kamble. The complainant, who was present nearby, tried to intervene and assist Siddharth. At this point, the complainant himself was also attacked. It is specifically alleged that Sitaram was armed with a knife and inflicted grievous injuries on Siddharth, including on his neck, both wrists, and abdomen. When the complainant attempted to help Siddharth, Sitaram allegedly threatened him with dire consequences and assaulted him as well, causing serious injuries on his back, left cheek, head and ear. Following the said incident, the applicant came to be arrested. The applicant had earlier applied for bail before the Sessions Court; however, the said application was rejected. Hence, the present application has been filed before this Court.

4. Learned advocate for the applicant has submitted that, as per the prosecution case itself, the fatal injuries were caused by Sitaram, who used a knife and inflicted grievous wounds leading to the death of the victim. The role attributed to the present applicant is limited to allegedly assaulting the deceased with fists and blows and discouraging people from helping the victim by shouting at them. It is further submitted that the applicant was arrested on 22nd July 2024 and has been in custody since then. The learned counsel, therefore, contends that the applicant's role is not of such a nature which warrants continued custody and seeks his release on bail.

5. On the other hand, learned APP strongly opposed the bail application. It was argued that although the applicant may not have used any deadly weapon, his conduct in obstructing or dissuading others from helping the victim is a serious act which shows his active participation in the offence. His involvement attracts the principle of common intention under Section 34 of the Indian Penal Code (now read as Section 3(5) of the Bhartiya Nyay Sanhita), thereby making him equally liable for the consequences of the assault. The learned APP further pointed out that during the pendency of this application, another FIR No. 211 of 2025 was registered in connection with an incident wherein six individuals, allegedly connected with the accused persons, had threatened local residents with swords and tried to intimidate those linked to the case of Sitaram. The prosecution submits that if the applicant is released on bail, there exists a real and imminent danger that he may influence or threaten the prosecution witnesses or disturb the

peace in the locality. Therefore, the State has strongly opposed the grant of bail and prayed for its rejection.

6. I have carefully considered the submissions made on behalf of the applicant and the learned APP, and perused the material placed on record. The prosecution case, as narrated, indeed discloses a serious offence where one of the victims sustained grievous injuries allegedly at the hands of Sitaram, who is specifically attributed with the act of inflicting multiple stab injuries with a knife. As far as the role of the present applicant is concerned, the prosecution case is that he had assaulted the victim with fists and blows and had shouted to dissuade others from helping the victim. There is no specific allegation of use of any weapon by the applicant.

7. It is a settled principle of criminal jurisprudence that bail is the rule and jail is the exception, particularly when the accused is not shown to have played the principal or direct role in the commission of the offence. In the present case, the main act of assault with deadly weapon is attributed to Sitaram. The role of the applicant appears to be of a secondary nature and, at this stage, it would not be appropriate to assume parity of culpability without full trial.

8. The applicant has been in custody since 22 July 2024, and no serious criminal antecedents are pointed out against him. The trial is likely to take considerable time. It is not shown that the applicant poses a flight risk or is likely to tamper with evidence directly. Though there is a reference to a subsequent FIR (No. 211

of 2025), there is no specific allegation that the present applicant was involved in that incident. General apprehensions, unless backed by concrete material, cannot be a sole ground for denial of bail.

9. Taking into consideration the nature of allegations attributed to the applicant, the period of incarceration already undergone, and the overall facts and circumstances of the case, I am of the opinion that the applicant deserves to be enlarged on bail, subject to appropriate conditions.

10. Hence, the following order :

(a) The Bail Application is allowed.

(b) The applicant, shall be released on bail in connection with Crime Register No. 438 of 2024 registered with RCF Police Station for offences punishable under Sections 103(1), 109, 61(2), 115(2), 352, 351(3), 189(2), 191(3), 190 of BNS, Sections 4, 25 of the Indian Arms Act, and 37(1)(A), 135 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:

(c) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(d) The applicant shall report to the RCF Police Station, on the first Monday of every month 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.

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

(AMIT BORKAR, J.)