

VRJ

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

BAIL APPLICATION NO.451 OF 2025

Prashant Prahlad Rotkar	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Sudeep Pasbola, Senior Advocate with Rohin R. Chauhan, Jyoti More and Rajiv Sasane for the applicant.

Ms. Mahalakshmi Ganapathy, APP for the State.

Mr. Pravin Patil, PI. and Mr. Ritesh Patil, Chunabhatti Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 29, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime No. 544 of 2023 registered with Chunabhatti Police Station. The applicant is charged for serious offences punishable under Sections 302, 307, 120-B, 212, 201 read with 34 of the Indian Penal Code, 1860, as well as under Section 3 of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act).

2. The brief facts as alleged by the prosecution are that on 24th December 2023 at around 3:10 p.m., one Sumit Yerunkar, the deceased, along with his friends Madan Patil, Roshan Lokhande,

Aakash Khandagale and the informant Vinod Vishwakarma, had gone to Shree Photo Studio located at Azad Galli, Chunabhatti, to get his photographs clicked for putting them on banners and flex boards for his birthday. While they were there, five accused persons, namely Babu, Sunil, Naresh, Sagar, and Prabhakar, allegedly arrived and suddenly opened fire at Sumit and his companions. Due to the firing, Sumit suffered multiple gunshot injuries and eventually succumbed to them at the hospital. His friends and some other bystanders also sustained injuries.

3. Following the incident, FIR came to be lodged by Vinod Vishwakarma, and offences under Sections 302, 307, 120-B, 212, 201 read with 34 of IPC, and Sections 3, 25, 27 of the Indian Arms Act, were registered. Subsequently, after completing the procedural formalities such as forwarding report and obtaining prior approval and sanction, provisions of the MCOC Act were also invoked against the accused. A charge sheet has been filed after completion of investigation.

4. The learned Senior Counsel appearing for the applicant submitted that the applicant is not the main assailant. His specific role as per the prosecution is only to the extent of standing at the end of the galli to prevent public from entering, thereby facilitating the firing by the main accused. It is submitted that the applicant has not fired any shot, nor has he been found with any weapon. The prosecution's case rests on the allegation that the applicant assisted the other accused by acting as a lookout or guard.

5. It is further argued that the applicant has only one previous

case under the Indian Penal Code, and that case is not connected with any organized gang activity. Mere presence in the vicinity of the scene of offence cannot be construed as active participation, particularly when the applicant is a resident of the same locality, and his presence there can be explained on that basis.

6. As regards the telephonic contact with the other accused, the learned Senior Counsel submitted that calls exchanged during the three months before the offence, without any overt criminal act, are not sufficient to attract provisions of MCOC, which require continuing unlawful activity and established nexus with an organized crime syndicate.

7. It is also brought to the Court's notice that the applicant has been in custody since 1st January 2024. The prosecution has cited 47 witnesses in the charge sheet, and trial is likely to take considerable time. In such circumstances, prolonged pre-trial detention of the applicant would be unjust, especially when his role is not of principal perpetrator.

8. On the other hand, the learned APP has opposed the grant of bail. It is argued that the role of the applicant was not passive but was intended to aid the main assailants by blocking public entry into the galli so as to ensure smooth execution of the attack. The prosecution relies on Call Detail Records (CDR) showing that the applicant was in contact with known gang members not only three months prior to the incident, but also just seven days before it took place. According to the prosecution, this suggests a meeting of minds, amounting to a conspiracy.

9. It is also pointed out that the applicant has antecedents, namely C.R. No. 274 of 2019, registered under Sections 324, 323, 504 of IPC, indicating a propensity towards violent behaviour. In view of this, it is apprehended that if released, the applicant may indulge in similar criminal activities or tamper with witnesses. On these grounds, the APP prayed that the bail application be rejected.

10. I have carefully considered the rival submissions and perused the material on record, including the FIR, charge sheet, and case diary papers. At the outset, it must be noted that the allegations against the applicant, though serious in nature, pertain to a limited and specific role, namely, that he was standing at the end of the galli to prevent entry of the public, thereby allegedly facilitating the firing by the co-accused.

11. It is important to appreciate that the applicant is not alleged to have participated in the actual act of firing, nor has any firearm or weapon been recovered from him. There is no eyewitness account or CCTV footage brought to my attention which clearly establishes that the applicant acted in concert with the shooters at the time of the incident. His presence at the end of the galli, without any direct act of violence or possession of weapon, may at best amount to passive presence, and cannot be equated with principal or active participation in the offence under Section 302 or 307 IPC.

12. As far as invocation of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) is concerned, the applicant is shown

to have only one earlier offence registered in 2019 under Sections 324, 323 and 504 IPC. That case is not connected with the present offence, nor with any of the alleged gang members.

13. Even assuming that the applicant was in contact with co-accused over telephone in the three months prior to the incident, the Call Detail Records (CDR) by themselves, in the absence of any specific incriminating conversation or action, do not conclusively prove participation in organized crime. The prosecution has not placed on record any intercepted conversation or message showing planning or coordination of the present attack. Thus, the applicability of MCOC provisions to the applicant is *prima facie* arguable, and not free from doubt.

14. The applicant has been in custody since 1st January 2024, and charge sheet has already been filed. The entire investigation is complete. There are 47 witnesses cited by the prosecution, and trial is not likely to conclude in the near future. Continued incarceration of the applicant at the stage of trial, without strong and cogent evidence of his active involvement or likelihood of tampering with evidence or threatening witnesses, would be violative of his right to personal liberty guaranteed under Article 21 of the Constitution of India.

15. It is also well settled that bail is the rule and jail is the exception, especially when the investigation is over and the accused is not a flight risk. The applicant is a permanent resident of the locality, and no material has been placed on record to show that he attempted to abscond or evade arrest. Appropriate

conditions can be imposed to ensure his presence at trial and to prevent any attempt to influence witnesses.

16. In view of the above discussion, considering the limited role attributed to the applicant, the absence of any direct act of violence, doubtful applicability of MCOC provisions, completion of investigation, and likelihood of prolonged trial, I am of the considered opinion that the applicant deserves to be released on bail, subject to strict conditions.

17. Hence, the following order is passed.

- i) The bail application is allowed;
- ii) The applicant Prashant Prahlad Rotkar is directed to be released on regular bail in connection with Crime No.544 of 2023 registered with Chunabhatti Police Station for offences punishable under Sections 302, 307, 120-B, 212, 201 read with 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Control of Organized Crime Act, 1999, upon furnishing a personal bond of Rs.50,000/- (Rupees Fifty Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:
 - a) The applicant shall report the Chunabhatti Police Station on first Monday of every month between 10.00 a.m. to 12.00 noon, until further orders.
 - b) The applicant shall not tamper with the evidence or attempt to influence any witness.

- c) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
 - d) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
 - e) The applicant shall not indulge in any criminal activity during the pendency of the trial.
 - f) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.
- 18.** The bail application is allowed and disposed of.

(AMIT BORKAR, J.)