

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 485 OF 2025

Annu @ Mohammed Hanif Yunus Shaikh	.. Applicant
Versus	
State Of Maharashtra	.. Respondent

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- Mr. Rohan Chauhan a/w Mr. Kushal Mor, Advocates for Applicant.
 - Ms. Savita M. Yadav, APP for State.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2025

P. C.:

1. Heard Mr. Chauhan, learned Advocate for Applicant and Ms. Yadav, learned APP for State.

2. Applicant - accused has filed the present Application for regular bail in connection with Crime No. 950 of 2024 registered with Shanti Nagar Police Station for the offences punishable under Sections 109, 143, 147, 148, 149, 302, 307 and 120-B of the Indian Penal Code, 1860, under Sections 25 and 4 of the Arms Act, 1951 and under Sections 37(1) and 135 of the Maharashtra Police Act, 1951. The Applicant herein is arrayed as Accused No.6 in the charge-sheet. In FIR which is filed Applicant is not named as an accused. FIR lists names of Aarif Khan, Bhau Abid, Babulal, Fardin, Sadiq, Shakil Shaikh, Samir Shaikh, Idu Shaikh, Zishan Shaikh, Saliwala as Accused Nos. 1 to 10 along with 3 to 4 unknown persons.

3. Learned APP has fairly argued that on the date of incident which happened on 02.04.2024 in a public place in the middle of road near KGN Chowk between 06:20 to 06:30 pm, the Applicant before me was not present. There is substantial evidence on record to show that he was not present but indictment of Applicant is on the basis that he is a sympathizer of the main accused persons who were present at the scene of crime and has indirectly aided and assisted them rather conspired with them in eliminating one of the deceased victim. Deceased in the present case are two persons. FIR is filed on 03.04.2024 which is appended at page No.15 of the Application. One of the deceased is a person called Zubair.

4. Mr. Chauhan, learned Advocate for Applicant would draw my attention to the FIR and persuade the Court to consider the fact that name of the Applicant is not stated in the FIR. He would submit that supplementary statement was recorded on the same date that is on the date of filing FIR, on the following date of the incident in the ICU ward of the Hospital where the victim was admitted. That supplementary statement is appended at Page No.261. He would submit that in that supplementary statement the motive of crime is having an oblique reference to some meeting and names of some of the accused persons but even this supplementary statement does not name the Applicant. However, a second supplementary statement is

recorded which is appended at Page No.264, wherein name of Applicant is stated by the First Informant.

4.1. Juxtaposing the supplementary statements he would submit that one of the deceased victim namely Zubair was having a partnership in a matka (gambling) business with the Applicant and his brother Yusuf since long as they happened to be friends. Over a period of time due to demise of one of the family member of the victim Zubair , Applicant and his brother Yusuf reduced the share of proceeds which was given to Zubair from the said matka business. This was in view of the fact that Zubair 's relative one Tufel was in fact looking after the matka (gambling) business on behalf of Zubair along with Applicant and his brother and he passed away due to cardiac failure. Hence, over a period of time Applicant and his brother stopped giving any money / share from the proceeds of the matka business to Zubair.

4.2. In the first supplementary statement there is another incident referred to from the previous year by the First Informant. He has stated that on 20.11.2023 at about 04:30 pm one of the member of Zubair 's family was teased by some of the accused persons and therefore complaint was lodged in the police station against them.

4.3. He would submit that the aforesaid two statements occurring in the first and second supplementary statements are the

only material available with the prosecution to indict Applicant in the present crime as accused. Additionally he would submit that the Applicant has been indicted on the basis of he having indirectly supported the accused persons in view of the aforementioned two statements relating to abstract incident and relationship over a period of few year and another with respect to the lodging of a complaint in the previous year.

5. Per contra, Ms. Yadav, learned APP for State has drawn my attention to the fact that the motive for the crime is apparent from the second statement which is appended at Page No.264 of the Application. She would next submit that motive of the crime can be seen from the fact that the Applicant and his brother Yusuf had stopped paying the share/amount to the deceased victim Zubair which probably led to the issue between the parties. *Prima facie* reading the second supplementary statement, what is submitted by the learned APP is not borne out at all rather said statement brings out the fact that deceased Zubair was friends with the Applicant and his brother Yusuf.

6. I am informed across the bar that Applicant's brother Yusuf has been arrayed as accused but has not been arrested in the crime. Question before the Court is if there is the motive as argued by the learned APP then that motive has to be *prima facie* seen, that

incidentally is not seen by this Court on reading the statement at page No.264.

7. Ms. Yadav, learned APP would draw my attention to the statement given by Accused No.3 namely Babulal which is appended at page No. 316 of the Application and would submit that if the statement is read it would be apparent that a conspiracy was hatched against the deceased victims. I have perused the said statement. All that the statement states is that during Ramzan when some of the accused persons and Applicant had met on one evening to end their fast, a discussion took place with respect to somebody making a statement that 'उन साले लोगो को तुम लोग देख लो लगा तो खर्चा हम करेंगे'. There is no reference to any person specifically.

7.1. Next she would draw my attention to the statement of lady member of one of the deceased victim's family Shafina which is appended at page No.345 and would submit that she has stated that indirectly Applicant and his family members supported the accused in commission of the crime. That apart she would submit that there are seven antecedents against the Applicant and she has drawn my attention to the details at Page No.215. However, on perusing the same it is seen that all those antecedents pertain to his illegal business of gambling/matka only.

8. After considering the material on record presented before this Court and argued by learned Advocates, motive of the crime to link the role of Applicant is *prima facie* not evident. In that view of the matter, Applicant is entitled to be released on bail.

9. In view of the above observations, Application is allowed subject to the following terms and conditions:-

- (i)** Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount;
- (ii)** Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 am to 12:00 pm for the first three months and thereafter as and when called;
- (iii)** Applicant 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 he does so, it will entitle the prosecution to apply for cancellation of this order;
- (iv)** Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v)** Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

(vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

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

11. In view of the above directions, Bail Application stands allowed and disposed.