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

**BAIL APPLICATION NO.645 OF 2025**

|                            |                |
|----------------------------|----------------|
| Arjun Shamshersingh Gautam | ... Applicant  |
| <b>V/s.</b>                |                |
| The State of Maharashtra   | ... Respondent |

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Mr. Omneel A. Jadhav for the applicant.

Ms. Supriya I. Kak, APP for the respondent-State.

Mr. Vijay Pankar, PSI, Shantinagar Police Station,  
Bhiwandi, is present.

**CORAM : AMIT BORKAR, J.**

**DATED : JULY 2, 2025**

**P.C.:**

1. This is a bail application preferred by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime Register No. 451 of 2020 registered with Shantinagar Police Station, Bhiwandi, District Thane. The applicant has been arrested in relation to offences punishable under Sections 302, 326, and 504 read with Section 34 of the Indian Penal Code, 1860.

2. As per the prosecution case, on 23rd July 2020 at around 12.10 a.m., a person was found sleeping on the ground floor of a building adjacent to that of the informant. At that time, two unknown persons were seen arguing and exchanging abuses with the said person. They were thereafter driven away from the spot.

3. Subsequently, at about 2.45 a.m., the informant, upon hearing some commotion, came outside and saw police personnel along with two persons from the locality, namely Sonu Vakeel Ahmed Sayyed and Aurangzeb Mujjammil Hussain, standing near the compound of Siraj Hashmi. It was noticed that the person who had been sleeping earlier was lying on the ground with injuries on his head. He was taken to the hospital by the police for treatment.

4. Sonu Vakeel Ahmed Sayyed narrated to the informant that around 2.20 a.m., he had come out of his house and saw two unknown persons standing near the injured man. The victim appeared to have been assaulted. Sonu asked the said two persons to stay there while he went to inform the police. On the way, he met Aurangzeb Mujjammil Hussain, and together they went to the police station. Upon returning to the spot along with the police, the two unknown persons were found to have fled.

5. Based on the above, the informant suspected that the same two persons who had earlier abused the victim were the ones who attacked him. The informant gave a description of both individuals: one was about 25–30 years of age, fair complexioned, with a beard, around 5'5" in height, wearing a black shirt and speaking in Hindi; the other was around 25–27 years of age, fair complexioned, about 4'10" tall, wearing a yellow shirt and also speaking Hindi. The FIR came to be registered on 25th July 2020 after recording the informant's detailed statement.

6. The learned Advocate appearing for the applicant submits that one of the co-accused, who is attributed with a similar role,

has already been granted bail by a Coordinate Bench of this Court by order dated 6th February 2024. It is contended that on the principle of parity, the applicant is also entitled to the benefit of bail. It is further submitted that no direct evidence is available to establish the presence of the applicant at the time of incident, and the investigation has not yielded any material to link the applicant with the alleged crime conclusively.

7. The learned APP, however, opposed the application. She submits that the role of the applicant is not identical and that the involvement of the applicant has emerged during investigation. Nevertheless, she fairly concedes that there has been no Test Identification Parade (TIP) conducted during investigation, and as observed by this Court in paragraph 7 of the bail order passed in the case of the co-accused, there appears to be no prima facie material linking the applicant to the crime beyond the suspicion based on description.

8. On careful perusal of the material placed on record, it prima facie appears that the incident in question, as narrated by the prosecution, is based largely on the statements of witnesses who claim to have seen certain persons in altercation with the deceased prior to the actual assault. The assault is alleged to have been committed by use of a stone. However, it is important to note that the investigation does not disclose that any Test Identification Parade (TIP) was conducted by the Investigating Officer at any stage.

9. It is well settled that where the prosecution relies upon the evidence of eye-witnesses or persons who have seen the accused before or at the time of the commission of offence, holding a Test Identification Parade assumes significance, particularly when the accused are not previously known to such witnesses. The failure to conduct such an identification parade in the present case seriously undermines the strength of the prosecution case at this stage.

10. It is also brought to the notice of this Court that due to this very lapse, the coordinate Bench has already granted bail to the co-accused in Bail Application No. 3081 of 2023. In that case, too, the absence of a TIP and lack of material connecting the accused directly with the act of assault led the Court to extend the benefit of bail.

11. It is further necessary to emphasize that in serious offences involving the loss of human life, it is expected that the Investigating Officer remains alive and sensitive to the gravity of the offence and proceeds with the investigation in a diligent and methodical manner. When eyewitnesses have provided descriptions of assailants, the obligation of the Investigating Officer to conduct a Test Identification Parade is not only procedural, but essential for the integrity of the investigation.

12. In the present case, despite the availability of such descriptions and the presence of witnesses who allegedly saw the incident preceding the assault, the Investigating Officer has failed to take this necessary step. This lapse not only weakens the prosecution case but also reflects poorly on the standard of

investigation conducted. Such failure cannot be overlooked and must be brought to the notice of the Senior Superintendent of Police or Commissioner of Police concerned, so that appropriate sensitization and corrective steps are taken in future investigations of similar nature.

**13.** For the reasons aforesaid, the applicant deserves to be released on bail on the principle of parity.

**14.** Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail Crime Register No.451 of 2020 registered with Shantinagar Police Station, Bhiwandi, Thane for offences punishable under Sections 302, 326, 504 read with 34 of the Indian Penal Code, 1860, upon furnishing a personal bond of Rs.30,000/- (Rupees Thirty 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 mark his presence in the Shantinagar Police Station on first Monday of every month between 11.00 a.m. to 1.00 p.m. till the conclusion of the trial;
  - b) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly made 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;

c) 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.

d) The applicant shall regularly attend the proceedings before the jurisdictional Court.

e) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement of 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.

**15.** The bail application is allowed and disposed of.

**16.** Registrar (Judicial-I) shall forward a copy of this order to the Commissioner of Police, Thane District.

**(AMIT BORKAR, J.)**