

AGK

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

BAIL APPLICATION NO.790 OF 2025

Mohammad Faij Himayatulla Shaikh	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Ms. Jyoti R. Shahu for the applicant.

Mrs. Rajashree V. Newton, APP for the respondent-State.

Mr. S.D. Patil, PSI, Shivaji Nagar Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 10, 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 Register No.371 of 2019 registered with Shivaji Nagar Police Station, Deonar, Mumbai. The applicant is facing charges for offences punishable under Sections 302 (murder), 307 (attempt to murder), 323 (voluntarily causing hurt), 504 (intentional insult), 506(2) (criminal intimidation), read with Section 34 (common intention) of the Indian Penal Code, Sections 4, 25 and 27 of the Indian Arms Act, and Sections 37(1)(a) and 135 of the Maharashtra Police Act.

2. As per the case of the prosecution, on 22nd July 2019 at about 6.15 p.m., while patrolling duty was ongoing, one police officer informed the concerned police station that an unknown person was found lying in a pool of blood in an unconscious state. Upon receiving this information, another police officer rushed to the spot and found one Asif Guas Mohammed Khan @ Sheebu seriously injured and lying motionless. He was immediately shifted to Rajawadi Hospital, where the medical officers declared him brought dead. Upon further inquiry, it came to light that on the same day at about 4.30 a.m., the deceased and his friend Shibu were on their way home from Bainganwadi. At that time, they noticed the present applicant and other co-accused persons standing with iron rods and swords in their hands. There were also two other unknown persons present at the spot of incident.

3. The prosecution further alleges that the applicant and co-accused had seen a video recorded by the deceased on his mobile phone. The applicant and the others then approached the deceased and demanded that the said video be deleted. As the deceased refused to delete the video, the applicant along with co-accused persons attacked the deceased. The complainant was assaulted with iron rods and knives, while the deceased was grievously attacked with sharp weapons, including a blow on his cheek and other parts of the body. As a result of these injuries, the deceased died on the spot. Based on this incident, the present crime was registered.

4. The learned counsel for the applicant submitted that the applicant was arrested on 23rd July 2019 and since then has been

in custody. Charges in the case were framed in the year 2023. The prosecution has proposed to examine 29 witnesses. However, till date, the trial has not commenced. It is further submitted that the applicant does not have any criminal antecedents to her discredit. On these grounds, the learned counsel prayed that the applicant be released on bail, particularly considering the prolonged incarceration and delay in trial.

5. On the other hand, the learned APP strongly opposed the application for bail. It was submitted that the statements of key witnesses clearly indicate the active and direct involvement of the present applicant in the commission of the offence. The prosecution contends that there is sufficient material on record which, if believed, may result in conviction of the applicant. Hence, it was urged that this is not a fit case for grant of bail, and the application deserves to be rejected.

6. I have carefully considered the submissions advanced by the learned counsel for the applicant and the learned APP. I have also perused the case papers, including the FIR, statements of witnesses, and the charge-sheet filed.

7. It is an admitted position that the applicant has been in custody since 23rd July 2019. Charges were framed only in 2023, and as of today, the trial has not yet commenced. The prosecution has cited 29 witnesses. Looking at the number of witnesses and the pace at which the trial has proceeded so far, it is unlikely that the trial will conclude in the near future.

8. It is also not the case of the prosecution that the applicant has any criminal antecedents. There is nothing on record to show that the applicant has misused the liberty of bail in the past or that she poses a flight risk. The possibility of tampering with the witnesses can be taken care of by imposing appropriate conditions.

9. Without going into the merits of the case and keeping in view the settled principles of law that “bail is the rule and jail is an exception”, and also taking into account the prolonged pre-trial incarceration of the applicant and the delay in commencement of trial, this Court is of the opinion that the applicant deserves to be released on bail.

10. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.371 of 2019 registered with Shivaji Nagar Police Station, Deonar, Mumbai for offences punishable under Sections 302, 307, 323, 504, 506(2), 34 of the Indian Penal Code and Sections 4, 25, and 27 of the Indian Arms Act and Sections 37(1)(a), and 135 of the Maharashtra Police Act, 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 Shivaji Nagar Police Station, Deonar, Mumbai 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 not enter the area of Shivaji Nagar Police Station, Deonar, Mumbai, except for marking evidence and attending Trial Court.
 - d) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
 - e) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
 - f) The applicant shall not indulge in any criminal activity during the pendency of the trial.
 - g) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.
4. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)