

Shabnoor

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

BAIL APPLICATION NO.1034 OF 2025

Faruk Gaffar Bagwan	... Applicant
V/s.	
State of Maharashtra	... Respondent

**WITH
BAIL APPLICATION NO.4102 OF 2024**

Salim Mehmood Khan	... Applicant
V/s.	
State of Maharashtra	... Respondent

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Mr. Amit Sale, for the Applicant in BA/1034/25.

Mr. Prashant Pandey a/w Ms. Ridhima Mangaonkar & Sumati Gupta i/bW3 Legal LLP, for the Applicant in BA/4102/24.

Mrs. Mahalakshmi Ganapathy, APP for the State – respondent.

Mr. Dnyaneshwar L. PSI, Mulund Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

1. These are applications filed under Section 439 of the Code of Criminal Procedure, 1973, by the applicants seeking their release on bail in connection with Crime Register No. 267 of 2024 registered with Mulund Police Station. The applicants have been booked for serious offences punishable under Sections 302

(murder), 307 (attempt to murder), 144, 147, 148, and 153 of the Indian Penal Code, 1860, as well as under Sections 37(1)(A) and 135 of the Maharashtra Police Act, 1951.

2. As per the case of the prosecution, the incident has its roots in a personal dispute between the deceased, Akshay Narvekar, and accused No.1, Imran Khan alias Chickenwala, the owner of a hotel in Mulund. The deceased, along with the complainant and their friend Ankit Gidh, had earlier in the day gone to meet a common friend, Samir Maske, at Hari Om Nagar, where they had consumed liquor. Thereafter, they proceeded to the said hotel owned by Imran Khan.

3. A quarrel allegedly broke out between Akshay and Imran Khan regarding the food bill. Imran Khan then called Akash Sable, another mutual friend of both Akshay and Imran, to intervene. The group later agreed to meet at a chicken shop in Vaishali Nagar to settle the issue.

4. Around 7:30 PM, all parties assembled at the said shop. While Akshay and Akash were speaking with Imran, one Abdul Bagwan, allegedly a friend of Imran, arrived at the scene. Abdul allegedly began the altercation by slapping and verbally abusing Akash. When Akshay intervened, Abdul slapped him as well. This sparked a heated argument, which escalated into physical violence.

5. It is alleged that during the melee, Abdul Bagwan assaulted both Akshay and Akash with a knife. His brothers, Naushad and Faruk, allegedly joined him in the assault and attacked the victims using iron rods. Imran Khan is said to have stood by and verbally

abused the victims, but did not physically intervene.

6. Both Akshay and Akash fell to the ground due to the injuries suffered. Abdul and his brothers then fled the spot. The complainant and Ankit Gidh rushed to help the injured. Both victims were found to be bleeding heavily. They were taken to the hospital, where Akshay was declared dead. Akash sustained serious injuries and survived the attack.

7. Learned Advocate appearing on behalf of accused No.4 (Farukh) has submitted that on a plain reading of the First Information Report (FIR), statements of witnesses, postmortem report and injury certificate, there is no clear and direct material connecting accused No.4 with the fatal incident. It is urged that at the most, the evidence shows the presence of accused No.4 at the spot, but there is no specific overt act attributed to him which has caused the death of Akshay or the injuries to Akash. Out of the seven alleged eye-witnesses, only two have stated that the applicant, along with his brother, was seen assaulting the deceased and injured Akash. The remaining five witnesses have not assigned any role to the applicant, either in assaulting the deceased or Akash. Even the injured eye-witness, Akash Sable, has not specifically stated that accused No.4 assaulted the deceased. The postmortem report records the cause of death as “haemorrhagic shock due to stab injury to the femoral blood vessels”, which is sufficient to cause death in the ordinary course of nature, and other injuries found are not of such a nature as to cause death. The alleged iron rod used in the assault has not been recovered from accused No.4. On these grounds, learned counsel submits that

there is no prima facie material to justify continued custody and, therefore, accused No.4 is entitled to be released on regular bail.

8. Learned Advocate appearing for accused No.2 has submitted that there is no specific role assigned to accused No.2 in the incident. It is argued that no weapon has been recovered at his instance and the fatal assault is attributed to other co-accused. The statements of the prosecution witnesses show only that accused No.2 was present near the place of occurrence at the relevant time. The FIR, which was lodged immediately after the incident, does not assign any act of assault to accused No.2. It is, therefore, submitted that mere presence at the scene without active participation does not warrant denial of bail, and accused No.2 deserves to be released on regular bail.

9. Per contra, learned APP has opposed the application for bail filed by accused No.4. She points out that two prosecution witnesses, including the first informant, have categorically stated that accused No.4 assaulted both the deceased Akshay and injured Akash with an iron rod. The FIR itself names accused No.4 as one of the persons who, along with his brother, assaulted the deceased and Akash. The sequence of events, as narrated in the prosecution material, indicates that the accused persons were acting in concert and shared a common intention to assault the victims. According to her, this is not a case of mere presence but of active participation, and therefore, the prayer for bail of accused No.4 deserves to be rejected.

10. Insofar as accused No.2 is concerned, learned APP submits that the presence of accused No.2 at the spot is established from the statements of eye-witnesses. She further alleges that accused No.2 instigated and provoked the other accused persons to assault the deceased. Such instigation, coupled with his presence during the incident, prima facie indicates participation in the offence. In her submission, this is not a fit case for the grant of bail to accused No.2 and, therefore, his application also merits rejection.

11. I have considered the rival submissions and perused the FIR, statements of witnesses, postmortem report, injury certificate and other investigation papers.

12. Insofar as accused No.4 (Farukh) is concerned, although the FIR and statements of two witnesses, including the first informant, allege that he assaulted the deceased and injured witness Akash with an iron rod, it is noteworthy that five other eye-witnesses, including the injured Akash himself, have not attributed any overt act of assault to him. This inconsistency in the testimonies raises doubt about the specific role played by accused No.4. The postmortem report clearly records that the main cause of death was “haemorrhagic shock due to stab injury to the femoral vessels,” which injury has been attributed to another co-accused who allegedly used a knife. The remaining injuries, even if assumed to have been caused by an iron rod, are simple or not of such a nature as would ordinarily cause death. Furthermore, the alleged weapon, iron rod, has not been recovered from accused No.4. In such circumstances, the material presently on record does not, prima facie, show that accused No.4 shared a common

intention to cause the death of the deceased, or that his act was the proximate cause of death. The investigation is already complete, charge-sheet has been filed, and no further custodial interrogation of accused No.4 is shown to be necessary. Continued incarceration at this stage would serve no fruitful purpose and would amount to pre-trial punishment, which is impermissible in law. Therefore, on a careful consideration of the nature of allegations, contradictions in the eye-witness accounts, absence of recovery, and the stage of the proceedings, this Court finds that further detention of accused No.4 is not warranted.

13. Insofar as accused No.2 is concerned, the FIR lodged immediately after the incident does not assign any act of assault to him. The only allegation emerging from certain witness statements is that accused No.2 was present at the spot and allegedly provoked the other co-accused to assault the deceased. However, this allegation of provocation is general in nature, without any clear description of the words spoken or specific conduct on his part that directly led to the assault. No recovery of any weapon has been effected at his instance. The evidence of the prosecution witnesses on this aspect is also not consistent, while some refer to his presence, others are silent about any act of instigation. Mere presence at the scene of offence, without positive evidence of active participation, is not sufficient to attract criminal liability of the same degree as that of the principal offenders, particularly when the main role in causing the fatal injury is attributed to another co-accused. The investigation is complete and the charge-sheet is already filed. There is nothing on record to indicate that

his further detention is required for the purposes of investigation. Any apprehension of tampering with evidence or influencing witnesses can be addressed by imposing suitable conditions while granting bail. In such circumstances, keeping accused No.2 in prolonged custody before trial would not be justified and would run contrary to the principle that pre-trial detention should not be used as a form of punishment.

14. In view of the above discussion, this Court is of the considered opinion that both accused No.2 and accused No.4 have made out a case for grant of bail.

ORDER

(i) Bail applications are allowed.

(ii) Accused No.2 (Faruk Gaffar Bagwan) and Accused No.4 (Salim Mehmood Khan) in Crime Register No. 267 of 2024 registered with Mulund Police Station for offences punishable under Sections 302, 307, 144, 147, 148, and 153 of the IPC and Sections 37(1) (A)/135 of the Maharashtra Police Act, shall be released on bail on executing a personal bond of ₹50,000/- each with one or two solvent sureties in the like amount.

(a) The applicants shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer.

(b) The applicants shall attend all dates of hearing before the trial Court unless exempted for valid reasons

(c) The applicants shall furnish their current address and mobile number to the Investigating Officer and the trial Court, and shall not change the same without prior permission.

(d) In case of breach of any condition, the prosecution will be at liberty to move for cancellation of bail.

(AMIT BORKAR, J.)