

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

CRIMINAL BAIL APPLICATION NO. 1123 OF 2025

Shashikant Bhanudas Rawade

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Ganesh Gole a/w Mr. Ateet Shirodkar, learned Advocate for the Applicant.

Ms. Anamika Malhotra, learned A.P.P. for the State/Respondent.

Mr. Harshwardhan a/w Mr. Satyam Harshad Nimbalkar I/b Mr. Yash Vishal Saxena, learned Advocate for the Intervenor.

CORAM : ASHWIN D. BHOBE, J.

DATE : 26th AUGUST 2025.

P.C. :

1. Heard Mr. Ganesh Gole, learned Advocate for the Applicant, Ms. Anamika Malhotra, learned A.P.P. for the State/Respondent and Mr. Harshwardhan Pawar, learned Advocate for the Intervenor.

2. Applicant (Accused No. 2) in Crime No. 674 of 2023 registered with Saswad Police Station, District-Pune for the offences punishable under Sections 302, 307, 326, 324, 323, 427, 143, 147, 148, 149, 504 & 506 of the Indian Penal Code, 1860 ("IPC" for short), Section 4(25) of the Indian Arms Act, 1959, Section 7 of the Criminal Law Amendment Act, 2013 and Section 37(1) read with 135 of the Maharashtra Police Act, 1951, is before this Court, by the present application filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), seeking regular bail. There are 17 accused in the crime.

3. Crime No. 674 of 2023 is registered as Sessions Case No. 31 of 2024 and is pending before the Court of the Additional Sessions Judge, Pune.

4. As per prosecution case, political rivalry amongst two groups led to an altercation, which took a violent turn, by use of weapons. Sachin Dilip Rawade (deceased), member of one group succumbed to the injuries in the assault inflicted on him by a knife. Applicant is alleged to be the assailant on deceased Dilip.

5. Applicant was arrested on 30th September 2023. Bail Application at Exhibit-119 filed by the Applicant in Sessions Case No. 31 of 2024, was rejected by the learned Additional Sessions Judge, Pune by order dated 12th February 2025.

6. Mr. Ganesh Gole, learned Advocate for the Applicant submits that the Applicant in his Bail Application at Exhibit-119 filed in Sessions Case No. 31 of 2024 in paragraph nos. 3(f) till (i) had raised grounds of mental condition/the Applicant suffering from mental illness. He by pointing out to paragraph nos. 9 to 12 of the order dated 12th February 2025, submits that the Trial Court has not considered the issue pertaining to the mental illness of the Applicant. He submits that the Applicant being mentally unstable is entitled to bail.

7. Ms. Anamika Malhotra learned APP for the State, submits that the medical report from the jail authorities, indicate Applicant suffering from mental conditions. She submits that the Applicant will have to raise a specific plea of mental illness and thereafter the same will have to be

considered by Trial Court. She submits that the Applicant has not filed any application raising such a plea before the Trial Court.

8. Mr. Harshwardan Pawar, learned advocate for the Intervener submits that the Applicant is the main assailant, he was in perfect state of mind on the date of the assault and was aware of the consequences of his act. He disputes the claim of the Applicant suffering from any mental condition or Applicant being mentally unstable.

9. I have perused the records with the assistance of learned Advocates of the parties.

10. Chapter 27 of the BNSS refers to provisions in the case of accused person, who is of unsound mind (Chapter XXV of the Code of Criminal Procedure, 1973). Sections 368 and 369 of the BNSS read as under :-

Section 368. Procedure in case of person of unsound mind tried before Court :-

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness of mind and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) If during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest Government medical college.

(3) If the Magistrate or Court is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of

entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 369:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(4) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369.

Section 369. Release of person of unsound mind pending investigation or trial :-

1) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall, whether the case is one in which bail may be taken or not, order release of such person on bail:

Provided that the accused is suffering from unsoundness of mind or intellectual disability which does not mandate in-patient treatment and a friend or relative undertakes to obtain regular out-patient psychiatric treatment from the nearest medical facility and to prevent from doing injury to himself or to any other person.

(2) If the case is one in which, in the opinion of the Magistrate or Court, as the case may be, bail cannot be granted or if an appropriate undertaking is not given, he or it shall order the accused to be kept in such a place where regular psychiatric treatment can be provided, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a public mental health establishment shall be made otherwise than in accordance with such rules as the State Government may have made under the Mental Healthcare Act, 2017 (10 of 2017).

(3) Whenever a person is found under section 367 or section 368 to be incapable of entering defence by reason of unsoundness of mind or intellectual disability, the Magistrate or Court, as the case may be, shall keeping in view the nature of the act committed and the extent of unsoundness of mind or intellectual disability, further determine if the release of the accused can be ordered:

Provided that--

(a) if on the basis of medical opinion or opinion of a specialist, the Magistrate or Court, as the case may be, decide to order discharge of the accused, as provided under section 367 or section 368, such release may be ordered, if sufficient security is given that the accused shall be prevented from doing injury to himself or to any other person;

(b) if the Magistrate or Court, as the case may be, is of the opinion that discharge of the accused cannot be ordered, the transfer of the accused to a residential facility for persons with unsoundness of mind or intellectual disability may be ordered wherein the accused may be provided care and appropriate

education and training.

11. Paragraph nos. 9 to 12 of the order dated 12th February 2025 read as follows :-

“9. Secondly, according to the learned APP the documents produced on record show that the accused No. 2 Shashikant Rawade is a patient of schizophrenia. Therefore, it would be unsafe to release such type of accused who would cause injury either to himself or to some other person and it would be in his interest to remain in jail and to undergo medical treatment at the cost of the State. The prosecution is prepared to conduct the trial even on day to day basis and therefore delay in trial would not be a ground for releasing these accused on bail.

*10. Having anxiously heard the learned APP, learned advocate for the accused and the learned advocate for the informant. At the outset it shall be noted that the judgments cited on behalf of the accused are the judgments in appeal. The trial of this case is yet to start and therefore the conclusions arrived at in all those judgments are not relevant to decide the bail application. The judgment of the Hon'ble Bombay High Court in **Pradeepkumar Murugan vs. State of Maharashtra** has some relevance to the present case as the accused No. 2 Shashikant is shown to be suffering from schizophrenia. However, even in that case the Hon'ble High Court has released the accused on bail in appeal against conviction. Unlike in this case, the sister of the accused had come forward to take all the responsibility of the treatment of the accused and the security of him and other persons from him. Thus, the Hon'ble High Court, taking into consideration the fact that the accused would get better medical treatment, he was released on bail.*

11. The facts and circumstances of this case are unique in nature. The FIR discloses that there was long standing enmity between the deceased and the accused. The accused No. 1 caught hold the deceased and the accused No. 2 stabbed him by knife. It was thus clear that both the accused had intention to kill the deceased. The plea of mental ill-ness of the accused No. 2 cannot be considered at this stage as the trial of the case is yet to begin. I find merit in the submission of the learned APP that if it is the fact that accused No. 2 is a patient of schizophrenia, he would be dangerous to his own life or the life of the others. The accused No. 1 was holding the deceased to facilitate the accused No. 2 to stab him. Thus, he has active role in the alleged incident.

12. In view of all these circumstances both the accused can be considered to be the main assailants. In so far as the case of accused no. 2 is concerned, nobody has come forward to take his responsibility if he is released on bail. Under the circumstance, it would be just and proper to keep him in jail where he would get proper medical treatment to his mental ailment as is available in Yerwada Central Prison.”

12. Reading of Section 368 of the BNSS would indicate that, it must

appear to a Magistrate or Court of Sessions that the Accused placed on trial is of unsound mind and consequently incapable of making his defence. In such an event, fact of such unsoundness of mind and incapacity, has to be inquired on the basis of medical and other evidence as may be brought before the Court.

13. In the case of *Prakash Nayi Alias Sen v/s. State of Goa*¹, the Hon'ble Supreme Court in paragraph nos. 15 to 17 has observed as follows :-

"15. Chapter XXV of the Code of Criminal Procedure, 1973 (hereinafter "CrPC"), though procedural in nature, also becomes substantive when it deals with an accused person of unsound mind. A well-laid procedure is contemplated under Sections 328 to 339 CrPC. There is not even a need for an application under Section 329 CrPC in finding out as to whether an accused would be sound enough to stand a trial, rather it is the mandatory duty of the court. Under Section 330, the court can even go to the extent of discharging such a person if his inability to stand trial continues with a rigid chance of improvement. As per Section 334 CrPC, the judgment of the court shall include a specific finding that the act was committed due to unsoundness of mind, though it was actually done. The reason is simple as there cannot be an acquittal on the ground of unsoundness of mind unless the act is actually done.

16. The whole idea under the provisions discussed is to facilitate a person of unsound mind to stand trial, not only because of his reasoning capacity, but also to treat him as the one who is having a disability. The role of the court is to find the remedial measures and do complete justice.

17. Having noted the scope and ambit of Chapter XXV CrPC, including the provisions incorporated by way of amendments in the year 2009, one has to take into account the fact that the court has a larger role to play while considering the case under Section 84 IPC. If a friendly approach is required to be followed during the trial, when adequate powers have been conferred upon the court to even discharge an accused on the ground of an unsound mind, the same reasoning will have to be applied with much force when it comes to Section 84 IPC."

(Emphasis supplied)"

14. In the case of *Surfu Khan v/s. State of Jharkhand*², the Hon'ble Supreme Court in paragraph no. 2 has held as follows :-

¹ (2023) 5 SCC 673

² (2004) 13 SCC 460

“2. The bail application of the appellant was rejected by the Sessions Court in terms of order dated 29-9-2003, noticing, inter alia, that the High Court had earlier rejected his various applications seeking bail. The order of the Sessions Court was challenged before the High Court. By the impugned order, while dismissing the appellant's application, the High Court has rightly observed that the trial court would determine whether the trial should proceed or not. In case, the appellant is lunatic, the procedure as laid down in Chapter 25 CrPC has to be followed. It would be for the appellant to make an appropriate motion before the trial court. On such a motion being made, the matter would be decided, keeping in view the provisions of the said chapter of CrPC and, of course, if the trial court comes to the conclusion that the appellant is insane, the order in terms of Section 330 CrPC would be passed, without being influenced by the earlier rejection of the bail applications.”

15. Mr. Ganesh Gole, learned Advocate for the Applicant, submits that though the issue of the Applicant being mentally unstable was before the learned Sessions Court, he submits that the provisions of Chapter 27 of the BNSS were not brought to the notice of the Sessions Court. He submits that the present bail application be treated as request of the Applicant under chapter 27 of the BNSS.

16. Mr. Ganesh Gole and Ms. Anamika Malhotra, however in unison submit that an inquiry in the context of the Applicant being of unsound mind is required to be conducted in the present case. Mr. Gole submits that Sagar Bhanudas Rawade, brother of the Applicant who is Accused No. 1 in Crime No. 674 of 2023, though granted bail vide order dated 7.5.2025 has not released himself and stayed in jail in view of the Applicant's mental condition, as such Mr. Gole, seeks a direction for completion of the inquiry within the stipulated time.

17. Unsound mind is akin to legal insanity/legal incapacity. In paragraphs- 9, 11 and 12 of the Order dated 12.02.2025, learned Additional Sessions Judge, Pune has made observations with reference to the plea of mental illness of the Applicant, however, has not considered the said issue in the context of Chapter 27 of BNSS.

18. In view of the above, though I am not inclined to consider the request of the Applicant for bail, at this stage, I deem it proper to quash the order dated 12th February 2025 passed by the learned Additional Sessions Judge, Pune on Exhibit-119 filed in Sessions Case No. 31 of 2024 and remit the matter to the learned Additional Sessions Judge, Pune before whom Sessions Case No. 31 of 2021 is pending, with a direction to inquire into the plea of unsoundness of mind of the Applicant. The learned Additional Sessions Judge, Pune while undertaking the said exercise shall follow and comply with the procedure in terms of Chapter 27 of the BNSS. The learned Additional Sessions Judge, Pune is requested to complete the inquiry as expeditiously as possible and at any rate within a period of 30 days from the date of this Order being placed on record of Sessions Case No. 31 of 2021.

19. Mr. Ganesh Gole, learned Advocate for the Applicant submits that this order would be placed before the Additional Sessions Judge, Pune in Sessions Case No. 31 of 2024 within a period of 12 days from today. Parties herein assure to cooperate with the Court of the Additional Sessions Judge, Pune in the early disposal of the inquiry and not to take un-necessary adjournments.

20. Criminal Bail Application No. 1123 of 2025 stands disposed of in the abovesaid terms.

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by GITALAXMI
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Date: 2025.09.01
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[ASHWIN D. BHOBE, J.]