

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1149 OF 2025

Mohammad Aasif Abdul Salam Khan .. Applicant
Versus
State of Maharashtra .. Respondent

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- Ms. Roohita Shaikh, Advocate i/by Mr. Javed Shaikh, Mr. Anil Nile and Ms. Priyanka Nile for Applicant.
 - Ms. Shilpa K. Gajare – Dhumal, APP for Respondent.
 - PSI – A. R. Sawant, Mumbra Police Station.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 02, 2025

P.C.:

- 1.** Heard Mr. Shaikh, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent.
- 2.** This is an Application under Section 483 of Bharatiya Nagrik Suraksha Sanhita, 2023 seeking Bail in connection with C.R. No.1623 of 2024 registered with Mumbra Police Station for offences punishable under Sections 103(1), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').
- 3.** On 24.03.2025, after hearing learned Advocate for Applicant and learned APP following order was passed:-

“1. Heard Ms. Shaikh, learned Advocate for Applicant and Ms. Gajare – Dhumal, learned APP for Respondent.

2. Applicant before me is young offender of 20 years who has been arrested in offences punishable under Sections 103(1) and 3(5) of the Bharatiya Nyaya Sanhita, 2023. As per the prosecution

case, precursor to the incident in question was a quarrel which occurred between friends when deceased – victim had asked one of friends to give him his motorcycle to go to Kalwa for some work which was refused by him. When the refusal was done, there was an altercation between the friends at the incident spot. At that time Accused Nos.1 and 3 reached the incident spot where present Applicant was present with the other friends. Intervention of Accused Nos.1 and 3 in the verbal altercation escalated to such an extent that Accused No.3 asked Accused No.1 to fetch a knife to teach the friend who had refused to give him motorcycle a lesson. When the knife was brought by him and handed to Accused No.1 in that verbal altercation, the role attributable to present Applicant is that he held deceased – victim and Accused No.3 stabbed him.

3. Ms. Shaikh would persuade the Court to consider the fact that Applicant is having no antecedents, there was no motive or intent to commit the crime in question and it had happened on the spur of the moment because of the precursor incident namely verbal altercation which escalated into a moment of rage leading to the fatal incident.

4. In so far the role attributable to Applicant is concerned, Ms. Shaikh would persuade the Court to consider that he has been alleged to have held the deceased – victim which aided Accused No.3 to stab the victim. She would submit that Applicant is the sole bread earner of the family and he was working as a delivery / serving waiter in a stadium where sport matches were held.

5. She would submit that aforesaid submissions be considered by Court for enlarging the Applicant on bail as he has his father and mother to provide care and support and has deep roots in Society. The submissions made by Ms. Shaikh shall be duly considered by the prosecutor, appropriate instructions shall be taken regarding the precise role of Applicant as argued by Ms. Shaikh and the Court be apprised about the precise role of Applicant accordingly.

6. Stand over to 07th April, 2025.”

4. *Prima facie*, learned Prosecutor in her usual fairness would submit that role of Applicant as etched out from eye witness account is what is delineated in the aforesaid order of he having held the victim when Accused No.3 stabbed the victim.

5. She would also submit in so far as the precursor incident is concerned, it is *prima facie*, borne out from the record that it was

Accused No.3 who had the altercation which escalated into fight with the victim on the basis of precursor incident after which he summoned the other two co-accused persons including the Applicant.

6. In view of the precise role attributed to the present Applicant and considering his young age of 21 years today and he having been incarcerated for a period of 9 months 17 days in prison, I am inclined to release the Applicant on bail.

7. Considering Applicant's age and if he is enlarged on bail Court is hopeful that Applicant's family will undoubtedly do their duty to make every effort and attempt to reform and aid the Applicant in leading a reformed life while on bail rather than keep him in prison and expose him to criminal outlook and life in prison. However on the flip side, if a chance is given to the Applicant because of his young age by enlarging him on bail, there is a possibility that he will be remorseful and repent in retrospect. This is a chance required to be taken by the Court because punishment has to be believed to be inflicted for a reformative result rather than being punitive in nature.

8. Undoubtedly the trial will determine the punishment for the offence. While considering Bail Application in such facts, Court feels that reform and rehabilitation of the under trial accused needs to be considered especially when age of the accused is young so that the accused gets an opportunity / or is given an opportunity to reform,

rehabilitate and earn his livelihood honorably from the perspective of social integration. This is a chance which the Court must take considering the young age of accused. By considering this Court is not stamping approval of any of the actions of Applicant regarding the crime in question. Court is also equally conscious of the offence. The age of the Applicant is very young. If the Applicant is incarcerated in prison further, there is every possibility that he might loose faith in the institution and society at large and may tread the path of criminality or would waste his life. Incarceration in prison statistically shows that it exposes many youth to abuse.

9. There are several harms of incarceration which are inflicted disproportionately on the youth. This is the reason why Court feels that any / every semblance of a chance towards a reformatory approach in punishment should be adopted, especially in the case of young offenders. Hence every opportunity or to that extent risk should be constructively taken by the Court in the case of young offenders – accused before committing such accused to further custody and give such accused an opportunity to become a good citizen in the Society. These observations are only in the view of the young age of the Applicant before me and it is only a means to explore an alternative to incarceration so that the Applicant can become a good citizen.

10. Considering the aforementioned *prima facie* facts in the

present case, it persuades me to consider Applicant's case for grant of bail Applicant's incarceration for 9 months 17 days in prison considering his young age is likely to worsen his likelihood of success in every sphere of society and it will expose him to abuse. Hence, I am of the opinion that Applicant can be released on bail.

11. Hence, Bail 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.15,000/- with one or two sureties in the like amount;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.15,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.15,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

- (v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (vi) 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

12. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on

the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

13. Bail Application No.1149 of 2025 is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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