

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1201 OF 2025

Vasim Jamir Ansari @ Vasim Bhissi	Applicant /
	.. Accused No.4
Versus	
The State of Maharashtra	.. Respondent

**WITH
INTERIM APPLICATION (STAMP) NO. 9879 OF 2025
IN
CRIMINAL BAIL APPLICATION NO. 1201 OF 2025**

Faisal Toofal Shaikh	.. Intervenor
IN THE MATTER BETWEEN:	
Vasim Jamir Ansari @ Vasim Bhissi	Applicant /
	.. Accused No.4
Versus	
The State of Maharashtra	.. Respondent

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- Ms. S.K. Kamble a/w. Ms. Manisha Jadhav, Mr. Rohidas Bhor and Mr. Walchand Sawant, Advocates for Applicant.
 - Ms. Mahalakshmi Ganapathy, APP for Respondent- State.
 - Mr. Pranjal Agarwal a/w. Mr. Marmik Shah, Ms. Dixita Gohil and Mr. Ronak Burad, Advocates for Intervenor.
 - ASI Mr. Mohapure, Crime Branch, Unit – 1 , Thane present in Court.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 02, 2025.

P.C.:

1. Heard Ms. Kamble, learned Advocate for Applicant; Ms. Ganapathy, learned APP for Respondent – State and Mr. Agarwal, learned Advocate for Intervenor.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short “**CrPC.**”) seeking Regular Bail in connection with C.R. No.497 of 2020 registered with Rabodi Police Station for offences under Sections 302, 201 readwith 120-B and 34 of the Indian Penal Code, 1860 (for short “**IPC**”) readwith Sections 3 and 25 of the Indian Arms Act, 1959 and Sections 37(1)(a) and 135 of the Maharashtra Police Act, 1951. There are total 5 Accused persons in the present crime. Applicant is arraigned as Accused No.4 and is incarcerated since 04.09.2023 i.e. 1 year, 7 months and 29 days pending trial.

3. Applicant is an auto-rickshaw driver. Role attributed to the Applicant as per prosecution case is that he acting on instructions of Accused No.3 ferried Accused No.5 from Central Ground to Saket Road and parked his auto-rikshaw over there, after which he took him to Padgha, Bhiwandi in the car of Accused No.1 and from there travelled back alongwith Accused No.5 on the motorcycle which was used by Accused Nos.1 and 2 in commission of the offence and parked it under the bridge at Majiwada. Moot question to be *prima facie* seen and answered from the material placed on record is whether Applicant (Accused No.4) was having knowledge of the occurrence of the crime and was in it?

4. Applicant alongwith co-accused No.3 have been arrested after almost 2 years and 10 months from the date of FIR. Initially FIR was lodged by nephew of deceased – victim against unknown persons. Present Applicant alongwith co-accused No.3 was arrested subsequent to filing of charge-sheet.

5. Ms. Kamble, learned Advocate for Applicant would submit that Applicant is falsely implicated in the present crime and it is co-accused Nos.1, 2 and 5 who are the main accused and perpetrators of the crime who hatched the conspiracy to eliminate the deceased – victim. She would submit that Applicant is an auto-rickshaw driver at Thane and on the date of incident he received a call from co-accused No.3 asking him to bring his auto-rickshaw to take his pregnant wife to hospital, however when he reached the residence of co-accused No.3 he was told that the hospital visit was cancelled and instead he was given car key and some cash to be handed over to co-accused No.5 and was asked to to drive Accused No.5 to Padgha in Bhiwandi and give the car keys to co-accused Nos.1 and 2 and return back on the motor-cycle which would be handed over by co-accused No.1. This motor-cycle according to prosecution was purportedly used in commission of the alleged offence. She would submit that present Applicant merely acted on instructions of co-accused Nos.3 and 5 and was completely unaware about the alleged incident and was not part of any conspiracy as sought be alleged by prosecution. She would submit that both co-

accused Nos.1 and 2 have in their confessional statements stated that they alongwith co-accused No.5 hatched a conspiracy to eliminate the deceased – victim and hence present Applicant is not involved in the crime even as per co-accused persons' statements.

5.1. She would submit that the only Sections invoked against present Applicant are Sections 120-B and 34 of the IPC, however material on record *prima facie* does not make out any such case against present Applicant. She would argue that case of prosecution against Applicant is based on circumstantial evidence and there is no *prima facie* corroborative proof brought on record to establish complicity of Applicant in the crime. In addition to that, she would submit that Applicant is behind bars since 1 year, 7 months and 29 days and till date even charge is not been framed. She would submit therefore submit that there is no possibility of the trial commencing and / or concluding in the near foreseeable future and in such facts and circumstances wherein there is no sufficient material on record to establish *prima facie* guilt of Applicant – accused, she would urge the Court to release him on bail.

6. Ms. Ganapathy, learned APP for Respondent – State has vehemently opposed the Bail Application. She has persuaded me to consider the gravity of the crime and role attributed to present Applicant and would submit that there is ample material on record

which corroborates prosecution case and if Applicant is released on bail there is every possibility of he tampering with evidence and influencing witnesses and therefore urge the Court to reject the Bail Application.

7. Mr. Agarwal, learned Advocate for Intervenor – first informant has been permitted by me to address the Court and intervene in the matter at his request. He would submit that from the material on record it is clear that Applicant in furtherance of the conspiracy hatched in connivance with all other co-accused persons to eliminate the deceased – victim, acted on instructions of co-accused Nos.3 and 5 thereby aiding them in destroying the evidence i.e. motor-cycle used in commission of the crime. He would submit that offence committed by Applicant is a premeditated act and the gravity and seriousness of the same be taken into account by Court.

7.1. Mr. Agarwal has drawn my attention to the charge-sheet and would submit that Applicant is a conspirator having complete knowledge of the crime committed by co-accused Nos.1 and 2. He would submit that role of Applicant was to deliver the car to co-accused Nos.1 and 2 to plan their exit after commission of the crime and destroy the traces of evidence, if any. He would submit that Applicant brought the motor-cycle used in the commission of the crime from Bhiwandi to Thane and parked it in a secluded place below the

Majiwada flyover and when the offence was revealed and publicized, he removed the motor-cycle and dumped it in an open space near Manpada in Thane on his own which *prima facie* shows his complicity. He would submit that from the charge-sheet it is borne out that Applicant and co-accused No.5 met co-accused Nos.1 and 2 after they committed the murder, handed them over clothes and witnessed them changing their clothes before escaping in the car given to them. He would submit that the aforesaid cannot be deemed to be ordinary course of circumstances and point towards a planned murder executed under a contract by all co-accused persons in the crime. He has referred to and relied upon the decision of the Supreme Court in the case of *Ash Mohammad Vs. Shiv Raj Singh alias Lalla Babu and Anr.*¹ to contend that there are several factors which are required to be taken into consideration while exercising power of grant of bail an accused when offences are serious in nature as in the present case. He has referred to paragraph Nos.17 to 19 of the said decision which read thus:-

17. We are absolutely conscious that liberty of a person should not be lightly dealt with, for deprivation of liberty of a person has immense impact on the mind of a person. Incarceration creates a concavity in the personality of an individual. Sometimes it causes a sense of vacuum. Needless to emphasise, the sacrosanctity of liberty is paramount in a civilised society. However, in a democratic body polity which is wedded to the rule of law an individual is expected to grow within the social restrictions sanctioned by law. The individual liberty is restricted by larger social interest and its deprivation must have due sanction of law. In an orderly society an individual is

¹ (2012) 9 SCC 446

expected to live with dignity having respect for law and also giving due respect to others' rights. It is a well-accepted principle that the concept of liberty is not in the realm of absolutism but is a restricted one. The cry of the collective for justice, its desire for peace and harmony and its necessity for security cannot be allowed to be trivialised. The life of an individual living in a society governed by the rule of law has to be regulated and such regulations which are the source in law subserve the social balance and function as a significant instrument for protection of human rights and security of the collective. It is because fundamentally laws are made for their obedience so that every member of the society lives peacefully in a society to achieve his individual as well as social interest. That is why Edmond Burke while discussing about liberty opined, "it is regulated freedom".

18. *It is also to be kept in mind that individual liberty cannot be accentuated to such an extent or elevated to such a high pedestal which would bring in anarchy or disorder in the society. The prospect of greater justice requires that law and order should prevail in a civilised milieu. True it is, there can be no arithmetical formula for fixing the parameters in precise exactitude but the adjudication should express not only application of mind but also exercise of jurisdiction on accepted and established norms. Law and order in a society protect the established precepts and see to it that contagious crimes do not become epidemic. In an organised society the concept of liberty basically requires citizens to be responsible and not to disturb the tranquillity and safety which every well-meaning person desires. Not for nothing J. Oerter stated:*

"Personal liberty is the right to act without interference within the limits of the law."

19. *Thus analysed, it is clear that though liberty is a greatly cherished value in the life of an individual, it is a controlled and restricted one and no element in the society can act in a manner by consequence of which the life or liberty of others is jeopardised, for the rational collective does not countenance an anti-social or anti-collective act."*

7.2. He would submit that considering the overall material on record which shows complicity of Applicant in the crime, Bail Application of Applicant be rejected.

8. With the able assistance of the learned Advocates at the bar, I have perused the record of the case.

9. In the present case it is an admitted position by the prosecution that present Applicant has acted on instructions of co-accused Nos.3 and 5. It is seen that Applicant who is an auto-rickshaw driver by profession, on instructions of co-accused No.3 went to his residence to take his pregnant wife to the hospital where he was told by him that the said visit was cancelled and thereafter he was asked to take co-accused No.5 to Padgha and handover car keys to co-accused Nos.1 and 2 who would give him the motor-cycle and return back. It is seen that thereafter as per instructions of co-accused No.5 he parked the said motorcycle as co-accused No.5 was all along present with him. Except statements of co-accused and the Applicant himself, there is no other corroborative material on record which would substantiate the allegations of prosecution case against present Applicant.

10. That apart, incarceration of Applicant for 1 year, 7 months and 29 days pending trial also impels me to consider the present Application considering the role attributed to him. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

11. Argued before me is a case concerning liberty of an under-trial who has been incarcerated for 1 year, 7 months and 29 days, a situation impacting the rights of under-trial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, when the case is such that involves a question of personal liberty of an under-trial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defence.

12. In the landmark judgement of *Maneka Gandhi Vs. Union of India*², the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

13. The Supreme Court in the case of *Union of India Vs. K.A. Najeeb*³ while commenting upon the possibility of early completion of trial and extended incarceration held as under:-

“18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the

² 1978 (1) SCC 248
³ [2021] 1 S.C.R. 443

respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."

14. Applicant in present case has been in custody for 1 year, 7 months and 29 days. There is no possibility of the trial commencing / concluding in the near future.

15. In the case of *Avinash Ashok Torane Vs. The State of Maharashtra*⁴, this Court (Coram: N.J. Jamadar, J.) while dealing with a bail application for offence under Section 302 of IPC considering parity with another co-accused who was enlarged on bail considered the unlikelihood of completion of trial coupled with the period of long incarceration of 1 year 3 months of the Applicant and enlarged him on bail.

16. In the case of *Sonu Parmeshwar Jha Vs. The State of Maharashtra*⁵ this Court (Coram: M.S. Karnik, J.) was dealing with a bail application for offences under Sections 302 and 304(b) of IPC and considering circumstantial evidence against the accused as well as long incarceration of accused of 1 year 7 months enlarged him on bail.

⁴ Bail Application No.3535 of 2023 decided on 08.01.2024

⁵ Bail Application No.4122 of 2021 decided on 18.01.2023

17. In the case of *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Anr.*⁶, the Supreme Court while granting bail to accused incarcerated for 4 years in paragraph Nos.16 and 17 held as under:-

“16. Criminals are not born but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

18. *Prima facie* it is seen from the material placed on record that it is not clearly evident that present Applicant in question had precise knowledge of the crime and whether due to his acts and involvement he can be alleged to have conspired with other co-accused persons. It is *prima facie* borne out from record that on instructions of co-accused No.3, co-accused No.5 accompanied Applicant (Accused No.4) from Thane to Bhiwandi to deliver the car, money and clothes and back to Thane with the motor-cycle. It is seen from record that Applicant was

well versed with driving a 4-wheeler and a 2-wheeler and that is why his services were availed by co-accused No.3 who was known to him. Hence whether he had prior knowledge about the crime committed by co-accused Nos.1 and 2 in Bhiwandi is *prima facie* not clear at this stage.

19. In view of my above *prima facie* observations on the basis of role of the present Applicant *vis-a-vis* the period of incarceration undergone by him, I am of the opinion that Applicant has made out a case for grant of bail. Bail Application is allowed on the following 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 not make any attempts to re-associate with the prosecutrix in any manner either through a device or in-person and shall not reside in the jurisdiction of the Police Station wherein the prosecutrix is residing until the trial is concluded. Investigating Officer shall specifically ensure that this condition is followed;
- (vii) 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;

(viii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(ix) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(x) 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.

20. 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.

21. Bail Application is allowed and disposed. In view of disposal of the Bail Application, Interim Application (Stamp) No.9879 of 2025 is accordingly disposed.

[MILIND N. JADHAV, J.]

Ajay