

Ajay

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

CRIMINAL BAIL APPLICATION NO. 1244 OF 2025

Mr. Amir Ayub Mirza

.. Applicant

Versus

The State of Maharashtra

.. Respondent

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- Mr. Sunny Aaron Waskar a/w Ms. Harshada Morey, Ms. Bhavika Patil, Mr. Shamish Marwadi i/b Mr. Dilip Gupta, Advocates for Applicant.
- Mr. Dinesh J. Haldankar, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025.

P.C.:

1. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking Regular Bail in connection with C.R.No. 637 of 2024 registered with Powai Police Station for offences punishable under Sections 109, 115, 118(2), 351(3) and 352 of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS Act') read with Sections 37 (1)(a) and 135(A) of Bombay Police Act, 1951. Applicant is arrested on 27.07.2024 and incarcerated for 9 months pending trial.

2. It is prosecution case that Applicant and First – Informant victim are childhood friends and well acquainted with each other. It is prosecution case that one of their common friend Abu Bakar was in a relationship with a girl which subsequently ended. It is prosecution

case that Applicant started being friendly with that same girl which led to a dispute between Applicant and Abu Bakar. However on 26.07.2024 at about 08:30 p.m. while First – Informant victim and Abu Bakar were chatting near his house, Applicant arrived at the spot, confronted Abu Bakar regarding his connection with his girl-friend and started hurling abuses. It is prosecution case that the verbal altercation between them escalated into a physical altercation. First – Informant victim tried to intervene however Applicant started hurling abuses to him and asked him not to intervene between them. It is prosecution case that Applicant then pulled out a knife and tried to inflict a blow on First – Informant victim's neck however instead he received a blow on his right cheek. It is prosecution case that Applicant then inflicted 2 blows on Abu Bakar's stomach and seriously injured him. It is prosecution case that Abu Bakar was shifted to a hospital for treatment. Hence FIR was registered against the Applicant on the next day.

3. Mr. Waskar, learned Advocate for Applicant would submit that there was a precursor incident between Applicant and Abu Bakar as they had a verbal altercation prior to the alleged incident. He would submit that the incident arose from enmity, as Abu Bakar was talking to Applicant's friend (love interest) which led to the verbal altercation which further escalated into a physical fight between them however

Applicant lacked intent to hurt / murder Abu Bakar or First – Informant victim. On the issue of motive, he would submit that incident in question occurred due to the verbal brickbat between Applicant, Abu Bakar and First – Informant's intervention which further escalated into the physical altercation and in the said altercation Applicant inflicted the knife blows on Abu Bakar and one on First – Informant's face in the spur of the moment. He would submit that *prima facie* there is no pre-meditation on the part of Applicant and on perusal of chargesheet no case of pre-meditation is made out against Applicant.

3.1. He would submit that on perusal of injury report of Abu Bakar it is seen that out of 8 injuries, 5 injuries are of grievous nature however other 3 injuries are simple in nature. He would submit that till date First – Informant victim's injury report is not placed on record which further casts a doubt on prosecution case. He would submit that there are multiple contradictions in statements recorded before the police officer and the statement in the FIR. He would submit that on perusal of Abu Bakar's undated statement appended at page No. 68 a completely different story is narrated by him. He would submit that as per Abu Bakar's own statement Applicant never approached Abu Bakar or the First – Informant victim in the first instance. Hence prosecution case of pre-meditation falls to the ground.

3.2. He would submit that Applicant is a 22 year old auto-rickshaw driver and sole breadwinner of his family having deep roots in Society and old mother to provide support. He would submit that Applicant has no criminal antecedents to his discredit. He would submit that investigation is completed, chargesheet is filed and charge is not framed till date, commencement and completion of the trial in the near foreseeable future is doubtful. Hence he would urge the Court to allow the present Application.

4. Mr. Haldankar, learned APP for Respondent – State would vehemently oppose the arguments made by Mr. Waskar. He would submit that act of Applicant is serious in nature. He would submit that Applicant inflicted a knife blows on vital parts of Abu Bakar who was seriously injured and on First – Informant victim's face which clearly reflects intention of Applicant to cause their death. He would submit that injury report appended at page No. 72 of the Application coupled with statements of eye witnesses to the incident corroborate and support prosecution case.

4.1. He would submit that Applicant cannot claim ignorance of the consequences of his actions, as weapon used (knife) and intensity of assault and the injuries caused all establish that it was not an accidental or minor scuffle but a violent and lethal attack. He would submit that if released on bail there is every possibility of Applicant re-

offending himself, absconding, influencing witnesses and victims and tampering with evidence cannot be ruled out. He would submit that Applicant is a threat to the Society, hence would urge the Court to reject the Application.

5. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

6. It is *prima facie* seen that incident occurred due to the verbal altercation which escalated into a physical scuffle and fight and most importantly it happened on the spur of moment without any premeditation on part of Applicant. *Prima facie* motive of animosity between the parties is evident which led to the unfortunate incident. *Prima facie* it is seen that Applicant, injured victim – Abu Bakar and First Informant are all friends residing in the same vicinity. It is borne out from record that injured victim – Abu Bakar had friendly relationship with one girl with whom he broke up and the same girl befriended Applicant despite this when Abu Bakar and the said girl used to meet and chat with each other, Applicant used to get enraged and had repeated quarrels with Abu Bakar in this regard.

7. Even on the date of incident it is *prima facie* borne out from witness statement that during one such episode / incident of talking to the injured victim – Abu Bakar and due to intervention of First Informant the altercation escalated leading to infliction of blow with

the knife by Applicant. It is seen that prior to the incident there was a verbal altercation between them when abuses were hurled. That apart there is a dichotomy in the fact whether Applicant called Abu Bakar to talk to him or whether he directly approached Abu Bakar as emanating from statements. *Prima facie* on perusal of Abu Bakar's statement it is seen that a completely different story is narrated by him.

8. It is seen that alleged weapon (knife) is recovered at the instance of Applicant hence no further recovery is to be made. Needless to state that the complicity of Applicant can be proved at the stage of trial. No further recovery is to be made at the instance of the Applicant. However commencement and completion of the trial in the near foreseeable future is doubtful. In this regard the key question is whether the Applicant's further incarceration is required and justified, considering the facts and his young age?

9. 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.

10. In the landmark judgement of *Maneka Gandhi Vs. Union of India*¹, 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.

11. In the case of *Hussainara Khatoon Vs. Home Secy., State of Bihar*² the Supreme Court held as under:-

11.1. "Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."

12. Considering the aforementioned facts and circumstances of the case, absence of criminal antecedents. Applicant is a 22 year old young person arrested on 27.07.2024 and is incarcerated since then pending trial, investigation is completed, chargesheet is filed and charge is not framed till date. Commencement and completion of the trial in the near foreseeable future is doubtful. Hence I am of the

1 1978 (1) SCC 248

2 (1980) 1 SCC 81

opinion that Applicant can be released on bail.

13. Bail Application is allowed on 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) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (iii) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;
- (iv) 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;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

- (vi) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (vii) 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;
- (viii) 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.

14. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by parties uninfluenced by the present order and strictly in accordance with law.

15. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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