

AGK

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

BAIL APPLICATION NO.1358 OF 2025

Ajgar Gulam Hasan Khan	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Pranay Saraf for the applicant.

Mr. Mayur Sonavane, APP for the respondent-State.

Mr. S. Jadhav, PSI, Sir J.J. Marg Police Station, Mumbai, is present.

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2025.06.17
15:17:53
+0530

CORAM : AMIT BORKAR, J.

DATED : JUNE 17, 2025

P.C.:

1. This is an application filed by the applicant under Section 439 of the Criminal Procedure Code, 1973, seeking release on regular bail in connection with FIR No.162 of 2019, registered at Sir J.J. Marg Police Station, Mumbai, for offence punishable under Section 302 of the Indian Penal Code, 1860 (i.e., murder).

2. The prosecution case, in brief, is that on receipt of a wireless message stating that a woman was lying in an injured condition, the police reached the spot and found the victim in a critical state with multiple injuries. She was immediately shifted to the hospital; however, the doctors declared her dead on arrival. During investigation, it was revealed that an unknown person had assaulted the victim using a cement paver block, leading to her

death. The incident occurred on the footpath in a public place.

3. The applicant was arrested on 18 September 2019, i.e., soon after the alleged incident. His bail application came to be rejected by the Sessions Court. The applicant has now approached this Court seeking relief of bail, mainly on the ground of prolonged pre-trial custody and the nature of the evidence against him.

4. The learned advocate for the applicant has submitted that the entire case of the prosecution is built on circumstantial evidence, and there is no direct eyewitness to the actual act of murder. The only circumstance which the prosecution relies upon is that the applicant was last seen with the deceased shortly before the incident. It is argued that even if the 'last seen' theory is accepted for the sake of argument, it cannot be considered sufficient to deny bail in a case where the applicant has been in judicial custody for more than 5 years and 8 months, and where the trial has not concluded. Learned counsel further submits that such prolonged incarceration without final adjudication of guilt amounts to pre-trial punishment, which is impermissible in law.

5. On the other hand, the learned APP for the State has opposed the application by contending that two independent witnesses have clearly stated that they had seen the applicant in the company of the victim immediately before the incident, and near the very spot where the dead body was later found. It is also submitted that CCTV footage recovered during investigation shows the applicant's presence near the place of incident around the time when the offence is believed to have occurred. Therefore, the

prosecution contends that the chain of circumstances is strong and unbroken, pointing towards the guilt of the applicant, and as such, his release on bail at this stage would not be proper.

6. Upon perusal of the charge-sheet, statements of witnesses, and other material placed on record, the following points arise for consideration:

i) The entire case of the prosecution is based on circumstantial evidence. There is no direct evidence to show that the applicant assaulted or killed the deceased. The only incriminating circumstances relied upon are: The evidence of two witnesses who allegedly saw the applicant in the company of the deceased shortly before the incident; and The CCTV footage showing the presence of the applicant near the spot of offence around the relevant time.

ii) At this stage, it cannot be said that the prosecution's case is without substance. However, whether the chain of circumstances is complete and leads only to the guilt of the applicant is a matter that must be tested at the time of trial. The applicant, like every accused, is presumed innocent until proved guilty.

iii) The applicant has been in continuous custody since 18 September 2019, i.e., for a period of more than 5 years and 8 months. The trial has not commenced, and there is no certainty as to when the trial will conclude. Keeping the applicant in further custody would amount to undue pre-trial detention, which is contrary to the principles laid down in

Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81, and followed in *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616.

iv) The Supreme Court has repeatedly held that in cases based on circumstantial evidence, prolonged incarceration during trial can be a valid ground to grant bail, particularly where there is no evidence of tampering with witnesses or fleeing from justice. (*See: Union of India v. K.A. Najeeb*, (2021) 3 SCC 713).

v) It is also noted that the applicant has no antecedents and there is no material placed on record to show that he may abscond or interfere with the trial if released on bail. Appropriate conditions can be imposed to safeguard the fair conduct of trial.

7. Hence, the following order is passed:

(i) The application is allowed.

(ii) The applicant shall be released on bail in connection with FIR No.162 of 2019 registered with Sir J.J. Marg Police Station, for offence punishable under Section 302 of the Indian Penal Code, on executing PR bond of ₹25,000/- (Rupees Twenty-Five Thousand only) with one or two sureties in like amount.

(iii) The applicant shall not in any manner directly or indirectly contact the prosecution witnesses.

(iv) The applicant shall attend the trial Court regularly on all dates unless specifically exempted by the Court.

(v) The applicant shall not leave the jurisdiction of the State of Maharashtra without prior permission of the trial Court.

(vi) Any violation of these conditions shall entail cancellation of bail.

8. Order accordingly.

(AMIT BORKAR, J.)