

Rajput PR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1447 OF 2025**

Gufran Mohammed Arif Shaikh	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

**Mr R.S. Vidyarthi a/w Mr. Mohit Turakhia and Mr. Mehboob
Shaikh, for the Applicant.**
Mr Yogesh Y. Dabke, APP for the Respondent - State.

**CORAM DR. NEELA GOKHALE, J.
DATED: 11TH SEPTEMBER 2025**

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No.47 of 2018 dated 4th August, 2018 (originally 223 of 2018) registered with the Vinoba Bhave Police Station and thereafter registered with the DCB CID Unit-4, for offences punishable under Sections 363, 364-A, 365, 327, 324, 328, 506 and 120-B of the Indian Penal Code, 1860 and Section 37(1) of the Bombay Police Act, 1951.

2. The case of the prosecution as inferred from the FIR is that a boy of 13 years of age was allegedly kidnapped by the Applicant alongwith the co-accused. The First Informant is the father of the victim boy. It is the case of the prosecution that a conspiracy of kidnapping the victim was hatched by the real aunt of the victim alongwith the other four accused, including the present Applicant. The present Applicant is arraigned as Accused No.3. It is alleged that on the fateful night, when the victim was with his aunt, Jahangir Shaikh came in an auto rickshaw driven by another co-accused and the boy was forcefully pushed in the said auto rickshaw. According to the First Informant the victim cried for help but the aunt ignored his cries. The victim was taken to the house of one co-accused where he was kept overnight and was administered some substance. The following day he was taken to the house of another co-accused. Thereafter, the Police received information about the missing boy and his whereabouts. A raid was conducted by the Police and the victim was rescued. The statement of the victim's father was

recorded, pursuant to which the FIR was registered with the Vinoba Bhave Police Station.

3. The Applicant made an Application before the Trial Court for grant of bail. However, by order dated 17th November, 2018, the said Application was rejected. He again made an Application seeking bail before the trial Court, after the charge-sheet was filed. Once again, by order dated 7th February, 2019, the said Application was rejected. Thereafter, he filed Bail Application No.1081/2019 before this Court which was also rejected by order dated 19th July, 2021. Thus, the Applicant has filed the present Application for the relief as prayed.

4. Mr.R.S.Vidyarthi, learned counsel appears for the Applicant and Mr.Yogesh Dabke, learned APP represents the State.

5. Mr. Vidyarthi submits that co-accused Nos.1, 2 and 5 are enlarged on bail by the orders of this Court. He has

tendered the copies of orders dated 20th February, 2025, 13th March, 2025 and 18th July, 2025 passed by this Court enlarging Accused Nos.1, 2 and 5 on bail. He thus, seeks to invoke the doctrine of parity and submits that since the co-accused whose role is much more serious than that of the present Applicant are enlarged on bail, the present Bail Application be allowed.

6. Mr. Vidyarthi also submits that this Court in an earlier Bail Application of a co-accused, had directed the trial Court to expedite the trial and conclude the same within a period of one year. This period was extended by six months on the request of the trial Court and further extended by a period of one year. Mr. Vidyarthi has drawn my attention to the order dated 9th August, 2023 passed by this Court whereby the trial Court was directed to expedite the trial and conclude it within a period of one year. It was further extended for six months by order dated 23rd September, 2024 and further extended for one year by order dated 24th June, 2025. He thus, submits

that as on date the trial is not complete and hence on this ground also the Applicant be released on bail.

7. *Per contra*, Mr.Dabke submits that as we speak, the prosecution's last witness i.e. the Investigating Officer is being examined today. Thus, the trial is almost concluded. Secondly, he submits that the other accused were granted bail by orders dated 18th July, 2022; 28th February, 2025 and 13th March, 2025 on the ground of long incarceration of the accused and also on the premise that the trial is unlikely to conclude expeditiously. He submits that the situation is quite different today as the trial is almost concluded. He contends that thus, there is no parity between the Applicant and the co-accused. The circumstances on which bail was granted to the co-accused are distinct from the circumstances as exist on date. He thus, strongly resists grant of bail to the Applicant.

8. Heard counsels for the respective parties and perused the record with their assistance. The basic ground on which Mr. Vidyarthi seeks bail for the Applicant is on the

ground of parity. I have perused the bail orders in respect of the three co-accused who have been granted bail. This Court while granting bail to co-accused namely Shabina Ashraf Khan i.e. victim's aunt observed that she was arrested in the year 2018 and since then she was in custody. The charge was not framed till that date and hence she was released on bail.

9. The order dated 28th February, 2025 releasing the co-accused namely, Sultan Riyaz Khan on bail also indicates that he was released on the ground of long incarceration and at that point of time the trial was not likely to be concluded in the foreseeable future. By order dated 13th March, 2025 another co-accused namely, Jahangir Haidarali Shaikh was also released on the ground of long incarceration and the trial unlikely to be concluded in the near foreseeable future.

10. I have also considered the submissions made by Mr. Vidyarthi that the trial Court repeatedly sought extension of time to complete the trial. However, this Court by its recent

order dated 24th June, 2025 extended the time to conclude the trial upto June, 2026.

11. I have also gone through the decision of the Supreme Court in the matter of *Javed Gulam Nabi Shaikh Vs. the State of Maharashtra & Anr.*¹ as relied upon by Mr. Vidyarthi. Paragraph Nos.19 and 20 read thus:-

“19. 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.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.”

12. Undoubtedly, Article 21 of the Constitution guarantees a right to an accused to have a speedy trial. The Supreme Court has observed that in case the trial is delayed and the State is unable to facilitate a speedy trial to the

1 (2024) 9 SCC 813

accused, then the prosecuting agency or the State should not oppose plea for bail only on the ground that the crime is serious. The facts in the present case are quite distinct inasmuch as the trial is almost concluded as the last prosecution witness has deposed today itself. It is only in the event that if the trial gets unduly delayed and that too for no fault on the part of the accused, that the Court may be justified in ordering his release on bail on the ground that the right of the accused to speedy trial is infringed.

13. In view of the aforesaid discussions, I am of the opinion that the grounds on which the Applicant has sought bail, more particularly on the ground of parity with the co-accused is untenable. This is not a fit case for grant of bail as the prosecution has completed the examination of all its witnesses.

14. Bail Application is thus, rejected.

(DR. NEELA GOKHALE, J)