

AGK

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

BAIL APPLICATION NO.1604 OF 2025

Sitaram Fakiri	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Arun Rajput with Mr. Viral Mukte for the applicant.

Mr. Prasanna P. Malshe, APP for the respondent-State.

Mr. Pildankar, PSI, Antop Hill Police Station, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 21, 2025

P.C.:

1. The present application for regular bail is filed by the applicant under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS") in connection with Crime Register No.490 of 2024 registered at Antop Hill Police Station. The applicant has been arrested for offences punishable under Sections 189(2), 189(4), 191(3), 190, 103(2), 118(1), 352, 351(2) of the Bhartiya Nyay Sanhita, 2023 (hereinafter referred to as "BNS") along with Section 37(1) read with Section 135 of the Maharashtra Police Act.

2. As per the case of the prosecution, on 1st November 2025 at around 00.05 hours, an incident took place at Jai Maharashtra Nagar, Kokri Depot, Antop Hill, Mumbai, where a dispute had erupted between one Kartik R. Mogan Devendra and another

person named Monu. It is alleged that the deceased, Vivek Gupta , had come to the spot to intervene and resolve the said quarrel. However, it is further alleged that the applicant herein, along with other co-accused, had already formed an unlawful assembly with a common object and, in furtherance of the same, around 00.50 hours, launched a violent assault on the deceased. As per the FIR, co-accused Rajkutti inflicted knife blows, Vicky beat him with a bamboo stick, and Kartik, the president of Sagar Mitra Mandal, used a bat, while the applicant and other co-accused assaulted the deceased with fists and kicks. Due to the said assault, the deceased sustained grievous injuries on his chest, stomach, back, and hands and succumbed to the said injuries. Hence, the present FIR came to be registered.

3. Learned Advocate for the applicant has contended that although the applicant is named in the First Information Report (FIR), no specific overt act has been attributed to him in the said report. According to the learned counsel, the main role has been assigned only to two other accused persons. It is his case that the supplementary statement recorded by the informant, on the very same day, introduces for the first time the allegation that the applicant had held the deceased during the assault. He further argues that in the FIR, the informant had already named the applicant, and therefore, the contention that his name was not known initially does not stand to reason. He submits that the allegation of the applicant holding the deceased during the assault amounts to a material improvement and embellishment. On this ground, it is argued that the applicant deserves to be released on

bail, especially when no specific weapon is attributed to him and he has not caused any fatal injury.

4. On the other hand, the learned APP has opposed the bail application. He submitted that the CCTV footage of the scene of offence shows the applicant fleeing from the spot, and further indicates that the applicant was carrying a bamboo stick at the time. He submits that the presence of the applicant at the spot of incident is thus clearly established through the electronic evidence, and the conduct of fleeing from the scene indicates his involvement. Therefore, he contends that the applicant is not entitled to be enlarged on bail and the application deserves to be rejected.

5. I have given my anxious consideration to the submissions made on behalf of the applicant and the learned APP and have perused the material placed on record. It is not in dispute that the incident in question resulted in the unfortunate death of the deceased. However, upon careful scrutiny of the FIR and the supplementary statements, it appears that the role attributed to the present applicant is not of inflicting any fatal blow or using any weapon. The primary allegations of assault by knife, bat, and bamboo are against co-accused persons, whereas the role of the present applicant is of having allegedly participated in the assault by fists and kicks.

6. Furthermore, the allegation that the applicant held the deceased during the incident emerges only from a supplementary statement, which appears to be an improvement over the original

version in the FIR. In the FIR itself, the applicant is named but without any specific act attributed to him. It is also noteworthy that no recovery of any weapon has been made at the instance of the applicant. Though the CCTV footage shows the applicant fleeing from the spot and allegedly holding a bamboo, the same, in the absence of any direct overt act causing fatal injuries, does not prima facie establish a serious or active role in the commission of murder.

7. The applicant is in custody since his arrest and the investigation as against him appears to be complete. The applicant has no criminal antecedents on record. Trial in such matters is likely to take considerable time. The applicant can be subjected to appropriate conditions to ensure his availability during trial and to prevent tampering with the evidence or influencing witnesses.

8. In view of the above circumstances, and considering the principle that bail is the rule and jail is an exception, this Court is of the opinion that a case for grant of regular bail is made out in favour of the applicant.

9. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.490 of 2024 registered with Antop Hill Police Station for offences punishable under Sections 189(2), 189(4), 191(3), 190, 103(2), 118(1), 352, 351(2) of the BNS along with Section 37(1) and 135 of the Maharashtra Police Act, upon furnishing a personal bond of

Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- a) The applicant shall report the Antop Hill Police Station on first Monday of every month between 10.00 a.m. to 12.00 noon, until further orders.
- b) The applicant shall not enter the jurisdiction of Antop Hill Police Station, except for marking his presence and for attending trial.
- b) The applicant shall not tamper with the evidence or attempt to influence any witness, directly or indirectly.
- c) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- d) The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- e) The applicant shall not indulge in any criminal activity during the pendency of the trial.
- f) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.

10. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)