

Shabnoor

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

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BAIL APPLICATION NO. 2529 OF 2025

Akbarali Mohammad Shafik Shaikh ... Applicant
V/s.
State of Maharashtra ... Respondent

**WITH
BAIL APPLICATION NO. 1608 OF 2025**

Ahmed Mohammad Akhtar Shaikh @
Munna Pathan ... Applicant
V/s.
State of Maharashtra ... Respondent

Mr. Amrish Salunke a/wMr. Durgesh Pandey & Ms.
Shraddha Shind a/w Ms. Tanavi Gaikwad & Kajal
Sharma, Mr. Mirza Mohiuddin Baig, for the applicant in
both BAs.

Ms. Supriya I. Kak, APP for the State – respondent.

Mr. Sanjay Patil, ASI, and Mr. Vijay Marathe, ACP
(I.O.), Miraroad Police Station are present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2025

P.C.:

1. These are bail applications filed by the applicants under Section 439 of the Code of Criminal Procedure, 1973, seeking their release in connection with Crime Register No. 700 of 2023, registered at Kashimira Police Station. The applicants are facing serious charges under Sections 307 (attempt to murder), 384

(extortion), 386 (extortion by putting a person in fear of death or grievous hurt) and 120-B (criminal conspiracy) read with Section 34 (common intention) of the Indian Penal Code, 1860. In addition, offences under Sections 3 and 25 of the Arms Act, 1959 and Sections 3(1)(ii), 3(2), 3(4), and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (MCOC Act) have been invoked.

2. The prosecution case, in brief, is that on 13th October 2023, at about 10:00 a.m., co-accused Akbarali Mohammad Shafik Shaikh and Imran Abdul Rehman Shaikh reached the International Banking Cake Shop on a scooty. Co-accused Akbarali, allegedly with his face covered by a helmet, pointed a pistol at the shop owner Mr. Ibrahim Yasin Patel, apparently with an intention to commit extortion. It is further alleged that on the previous day, i.e., 12th October 2023, the present applicants along with co-accused had visited the said shop for reconnaissance ("reiki"). The FIR names the present applicants and two other absconding accused as participants in the offence.

3. Learned counsel for the applicants has submitted that as per the charge-sheet and witness statements, although the incident was committed by a person wearing a helmet, no Test Identification Parade (TIP) was conducted. He further submits that the shopkeeper identified the accused only based on the clothes they wore. As per the version of this witness, the applicants had come to the shop around 11:15 a.m. to 11:30 a.m. on the date of the incident and left the scooty there after purchasing food items. Apart from this witness, there is no direct or independent evidence

linking the applicants with the crime.

4. Insofar as applicant Ahmed is concerned, the allegation is that he assisted co-accused Akbarali to flee from the crime scene. However, no witness has identified Ahmed, and no overt act of his is seen from the record, except a general allegation of helping the co-accused escape. It is therefore argued that Ahmed's role is limited and indirect, and in absence of identification or strong material, he deserves to be granted bail. It is pointed out that Ahmed was arrested on 16th October 2023, while Akbarali was arrested on 13th December 2023. The charges have not yet been framed, and the prosecution has listed 47 witnesses, indicating that the trial will take considerable time. Hence, it is submitted that continued detention would amount to pre-trial punishment, and the applicants may be released on bail, subject to suitable conditions.

5. The learned Additional Public Prosecutor (APP) has strongly opposed the bail applications. She relied upon witness statements filed with the reply affidavit. She submitted that the CCTV footage clearly shows a person wearing a black helmet attempting to assault the victim, and it is the case of the prosecution that the scooty, helmet, and a live bullet have been recovered at the instance of the applicant. The scooty was used during the reconnaissance and the crime. It is further alleged that the applicant was accompanying co-accused Akbarali, and therefore played an active role in facilitating the crime. The APP contends that due to such involvement, the applicant is liable under the substantive offences as well as under the organised crime

provisions of the MCOC Act. It is further submitted that, in light of the statutory bar under Section 21(4) of the MCOC Act, the applicants are not entitled to bail, and the applications deserve to be rejected.

6. I have carefully considered the submissions advanced by both sides and perused the material placed on record, including the charge-sheet, witness statements, and the reply filed by the prosecution. At the outset, it is to be noted that the incident allegedly occurred on 13th October 2023, wherein the main allegation is that co-accused Akbarali entered the shop wearing a helmet and attempted to extort money at gunpoint. The CCTV footage, as per the prosecution, shows a person wearing a black helmet, but no Test Identification Parade has been conducted, and the identity of the assailant has not been independently established through any such process.

7. The prosecution has relied primarily on the statement of one shopkeeper who claims that the applicants visited the shop on the date of the incident and dropped their vehicle there. However, the said witness identified the applicants only based on their clothes. There is no other direct evidence connecting the present applicants to the act of brandishing a weapon or making a demand for money. Moreover, the role attributed to Ahmed is only that of assisting the main accused in fleeing the scene. There is no allegation that he was armed or that he directly participated in the act of extortion. His arrest is also three days after the incident.

8. It is a settled principle of law that bail is the rule and jail is

the exception, especially when the trial is not likely to commence in the near future. In the present case, although the offences alleged are grave in nature and attract the provisions of the MCOC Act, the applicants have been in custody since October and December 2023 respectively. The charges are not yet framed, and the prosecution has cited as many as 47 witnesses, which shows that the trial is likely to take a considerable amount of time. Prolonged incarceration without trial would offend the fundamental right under Article 21 of the Constitution.

9. Insofar as Section 21(4) of the MCOC Act is concerned, it imposes a restriction on grant of bail unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. In the present case, taking an overall view of the material on record, and particularly the absence of identification, lack of recovery of weapon from Ahmed, and the fact that the allegations mainly revolve around the role of co-accused Akbarali, this Court is of the prima facie view that the applicants have made out a case for bail even under the rigors of Section 21(4). Their antecedents have not been shown to be of such nature so as to suggest that they are habitual offenders or likely to commit similar offences if released.

10. In such circumstances, a case is made out for granting bail to the applicants, subject to stringent conditions to ensure their presence for trial and to prevent tampering with prosecution evidence.

11. Hence, the following order :

- (i) The Bail Applications are allowed.
- (ii) The applicants – Ahmed Mohammad Akhtar Shaikh and Akbarali Mohammad Shafik Shaikh shall be released on bail in connection with Crime Register No. 700 of 2023, registered with Kashimira Police Station for offences punishable under Sections 307, 384, 386, and 120-B read with Section 34 of IPC, Sections 3 and 25 of the Arms Act, 1959, as well as Sections 3(1)(ii), 3(2), 3(4), and 3(5) of the MCOC Act, upon furnishing a Personal Bond of ₹50,000/- (Rupees Fifty Thousand only) each, along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:
 - (a) The applicants shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness.
 - (b) The applicants shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.
 - (c) The applicants shall report to the Kashimira Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.
 - (d) Considering the antecedents of the applicants, they shall not enter the jurisdiction of Mumbai, except for the purpose of marking their presence, and only with prior

permission from the Trial Court.

(e) The applicants shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(f) The applicants shall, at the time of furnishing surety, provide their current residential addresses and mobile numbers to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.

12. The Bail Applications are allowed and accordingly disposed.

(AMIT BORKAR, J.)