

Shabnoor

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

BAIL APPLICATION NO.1617 OF 2025

Nelson @ Achu John D'Souza	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Zoheb Shaikh for the Applicant.

Mrs. Shilpa G. Talhar, APP for the State – respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 20, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on regular bail in connection with Crime No. 579 of 2018 registered at Vakola Police Station, Mumbai. The said crime is registered for the offences punishable under Sections 302, 201, 120-B, and 34 of the Indian Penal Code, 1860, which relate to murder, causing disappearance of evidence, criminal conspiracy, and common intention.

2. As per the prosecution, the incident took place on 21st December 2018, which was a Friday. On that day, the complainant, along with his father (the deceased), went to Kalina Jama Masjid at around 1:15 p.m. to attend the Jummah Namaz. Around 2:00 p.m., the complainant went home to pick up his brother Rahim,

who was scheduled to travel to Delhi. When the complainant returned with Rahim near the Jama Masjid, they met three of Rahim's friends, who were also going to Delhi with him. The complainant purchased bread from a shop and handed it to Rahim, after which Rahim and his friends left in an OLA car. At that time, the complainant noticed one Sohail, a relative of the accused Amirshad Khan, sitting on a bike near the Masjid.

3. Around 2:40 p.m., while the complainant was returning home, he met his father near their building. His father gave Prasad at home and then went to his shop. Shortly thereafter, the complainant's aunt, Shahana Samir Khan, called the complainant's mother and informed her that the complainant's father had been killed. Upon receiving this news, the complainant rushed to the shop and saw a crowd gathered near Bismillah Milk Centre. There, he found his father lying in a pool of blood, with his Activa scooter lying beside him, and a knife, iron rod, and broken pieces of plastic bamboo lying nearby.

4. On inquiry, people in the crowd stated that the assault was committed at the instigation of Amirshad Khan. It is alleged that his son, Azim Amirshad Khan, attacked the deceased with an iron rod, Zahid Amirshad Khan assaulted him with a knife, and two unknown persons used a knife and a plastic rod. Based on this information, the complainant lodged the FIR.

5. The learned advocate for the applicant submitted that the case against him stands on the same footing as certain co-accused who have already been granted bail. He referred to the order

passed by the Co-ordinate Bench of this Court in Bail Application No. 1882 of 2025 dated 6th May 2025, releasing co-accused Zahidshad Umarshad Khan @ Jahidshad on bail. He also relied on the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 7496 of 2025 dated 1st August 2025, granting bail to co-accused Mohinuddin @ Guddu Shaikh. According to the learned advocate, the role attributed to the present applicant is either similar to or even less serious than the role of Mohinuddin @ Guddu Shaikh, who is alleged to have caused the main injury to the deceased. On the basis of this principle of parity, he prayed for the applicant's release on bail.

6. In addition to the ground of parity, the learned advocate pointed out that the applicant has been in custody since 13th May 2019, thereby undergoing incarceration for over six and a half years. It was argued that in the absence of any likelihood of the trial concluding in the near future, continued detention would cause undue hardship.

7. On the other hand, the learned APP opposed the application. It was submitted that the case of the present applicant cannot be equated with that of the co-accused who have been released on bail, as the role attributed to them is materially different. According to the prosecution, the applicant is one of the main assailants who directly caused injuries to the deceased during the assault. In view of the gravity of the offence and the nature of the role alleged, it was argued that this is not a fit case for grant of bail.

8. I have considered the rival submissions and gone through the material placed on record. The primary allegation against the applicant is that he took part in the assault which resulted in the death of the complainant's father. However, it is pertinent to note that two co-accused, namely, Zahidshad Umarshad Khan @ Jahidshad and Mohinuddin @ Guddu Shaikh, have already been released on bail by orders of the Co-ordinate Bench of this Court and the Hon'ble Supreme Court respectively. The allegations against Mohinuddin @ Guddu Shaikh indicate that he had been attributed a major role of causing injury to the deceased. In comparison, the role of the present applicant, as per the prosecution version, is not shown to be graver.

9. The law is well settled that, unless there are distinguishing features, the principle of parity should ordinarily be applied to ensure consistency and fairness in the exercise of judicial discretion under Section 439 of the Cr.P.C. In the present case, the prosecution has not been able to point out any special circumstance which would justify a different treatment for the applicant as compared to the already released co-accused.

10. Apart from parity, the factor of prolonged incarceration also weighs in favour of the applicant. The record shows that the applicant has been in custody since 13th May 2019 and has thus undergone more than six years and three months of pre-trial detention. There is nothing on record to indicate that the trial is likely to conclude in the immediate future. The right to a speedy trial is recognised as a fundamental facet of Article 21 of the Constitution of India, and continued incarceration for an indefinite

period without conclusion of trial would amount to a deprivation of personal liberty beyond what is reasonable.

11. Having regard to the above facts, the length of custody already undergone, and the parity with co-accused who have been granted bail, I am of the view that the applicant has made out a case for release on bail. The apprehension of the prosecution regarding the applicant absconding or tampering with evidence can be addressed by imposing strict conditions.

12. Hence, the following order is passed.

(i) Applicant Nelson @ Achu John D'Souza is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) 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;

(iii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iv) Applicant shall attend the Trial Court on first Tuesday of every month between 11:00 a.m. and 01:00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(v) 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;

(vi) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(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.

13. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)