

AGK

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

BAIL APPLICATION NO.1734 OF 2025

Mohammad Umar Bashir Ahmed Khan ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mrs. Rajalakshmy Mohandas with Ms. Mukta Chorge,
Mr. Nehal Farukh Azam i/by Rajalakshmy Associates
for the applicant.

Mr. Sagar R. Agarkar, APP for the respondent-State.

Mr. M.R. Gavali, PSI, Donar Police Station, Mumbai, is
present.

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CORAM : AMIT BORKAR, J.

DATED : AUGUST 22, 2025

P.C.:

1. By the instant bail application filed under Section 439 of the Code of Criminal Procedure, 1973 ("Cr.PC." for short), the applicant seeks his release on regular bail in connection with Crime Register No.83 of 2024 registered with Deonar Police Station, Mumbai. The offences alleged against him are punishable under Sections 302, 307, 397 read with Section 34 of the Indian Penal Code, 1860 ("IPC" for short).

2. The prosecution case, in brief, is that on 26th February 2024, while the complainant, who is a Police Constable attached to Deonar Police Station, was on patrolling duty along with other police officials, he received information from one Mohammed

Gaws Shafeeq Shaikh that a person was lying injured near Ashishi Nagar Bus Stop Garden, Govandi and was in need of help. Acting on this information, the complainant along with his colleagues rushed to the spot and found one person by name *Ramkaram Ramnayan Gupta*, aged 28 years, in an injured condition with bleeding head injury. Upon inquiry, the injured disclosed that three unknown persons had assaulted him with wooden sticks and had snatched away his mobile phone. He was immediately shifted for medical treatment to B.Y.L. Nayar Hospital, Mumbai, where he succumbed to the injuries during treatment. Based on this information, the complainant lodged the present crime.

3. Learned Advocate appearing on behalf of the applicant submitted that the applicant has been falsely implicated in the present crime. It is her submission that the only role attributed to the applicant is of snatching the mobile phone of the deceased, and beyond that, no role in the assault is alleged against him. She further argued that there are material variances and inconsistencies in the statements of the witnesses. According to her, the co-accused persons are the main assailants, and the applicant cannot be saddled with the liability of murder, particularly when there was no intention on his part to cause death of the deceased. The applicant has been in custody since 27th February 2024, and therefore, considering the nature of his alleged role, he deserves to be enlarged on bail.

4. Per contra, the learned APP opposed the bail application and invited attention of this Court to the material collected during investigation. He submitted that the CCTV panchnama clearly

indicates the active involvement of the applicant in the assault on the deceased. The prosecution case is further strengthened by the statement of an eye-witness, who has categorically stated that it was the applicant who initially stopped the deceased when he tried to proceed away, and immediately thereafter, the assault commenced. The mobile phone, which was snatched from the deceased, has been recovered at the instance of the applicant. According to the learned APP, the presence of the applicant at the scene, his active role in restraining the deceased, coupled with recovery of stolen property, clearly shows his participation in the crime. Hence, even if the overt act of inflicting fatal blows is attributed to co-accused, the applicant cannot escape liability by virtue of Section 34 of the IPC, which makes every participant in the crime equally responsible for the acts done in furtherance of the common intention. Therefore, he submitted that the applicant does not deserve to be released on bail.

5. I have carefully considered the rival submissions and perused the investigation papers placed before me. At this stage, it is well-settled that the Court, while dealing with an application for bail in a serious offence like murder, has to consider the nature and gravity of the accusation, the role attributed to the accused, the evidence collected during investigation, and the possibility of the accused tampering with the evidence or influencing witnesses.

6. From the material on record, it prima facie appears that the incident is not a simple case of theft or robbery, but a brutal assault where the victim was stopped, attacked with wooden sticks, and thereafter relieved of his mobile phone. The eye-witness

account, which names the applicant as the person who intercepted the deceased, is corroborated by the CCTV footage prepared during panchnama. Furthermore, the recovery of the stolen mobile phone from the possession of the applicant directly connects him with the crime.

7. The submission of the learned Advocate for the applicant that his role is limited only to snatching the mobile phone cannot be accepted at this stage. It is evident from the sequence of events that the act of stopping the deceased, assaulting him with others, and snatching the mobile phone was a part of the same transaction carried out with common intention. Section 34 of the IPC squarely applies in such circumstances, as the acts of all participants are inseparably linked and committed in furtherance of a shared design. Therefore, even if the fatal blow is attributed to a co-accused, the applicant cannot escape the liability of the offence of murder.

8. The offences alleged are of a grave nature punishable with death or imprisonment for life. The manner in which the crime is committed reflects a pre-meditated and violent conduct, which prima facie excludes the possibility of granting bail. Considering the gravity of the allegations, the active participation of the applicant, and the material collected during investigation, I do not find this to be a fit case for exercise of discretion in favour of the applicant under Section 439 of the Cr.P.C.

9. Accordingly, the bail application stands rejected.

(AMIT BORKAR, J.)