

Shabnoor

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

CRIMINAL BAIL APPLICATION NO.1871 OF 2025

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... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Shailesh Chavan i/b Mr. Sumitkumar Nimbalkar,
for the applicant.

Ms. Rajashree V. Newton, APP for the State –
respondent.

Mr. Sagar Tambe for the Intervener.

Mr. Ravindra B. Mandlik, PI, EOW, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 26, 2025

P.C.:

1. Upon a careful perusal of the record placed before this Court, it becomes clear that the grievance of the applicant is not confined to seeking his release on bail simpliciter. Instead, what the applicant is essentially doing is questioning the legality and correctness of the order dated 4th February 2025 passed by the learned Sessions Judge in Criminal Miscellaneous Application No. 21 of 2025. Thus, though the present proceeding is titled as a bail application, in substance it partakes the character of a challenge to the judicial order passed by the Court below.

2. It is well settled that the jurisdiction of this Court under Section 439 of the Code of Criminal Procedure, 1973 is primarily meant for considering applications for bail, either anticipatory or regular, depending on the circumstances. The contours of this jurisdiction have been explained by the Supreme Court in *Rashmi Rekha Thatoi v. State of Orissa*, (2012) 5 SCC 690. The Apex Court has categorically observed that while exercising powers under Section 439 CrPC, the High Court must keep in mind relevant considerations such as the seriousness of the alleged offence, the evidence available on record, the possibility of tampering with witnesses, and the likelihood of the accused fleeing from justice. These parameters show that the jurisdiction is preventive and discretionary, essentially focused on liberty of the accused and the interests of justice.

3. However, when the applicant is not merely praying for bail but is in fact seeking to test the legality, propriety or correctness of an order passed by the Sessions Court, then the remedy does not lie under Section 439 CrPC. In such a situation, the proper course open to the applicant is to avail of the jurisdiction of this Court either under Section 482 of CrPC, or under Articles 226/227 of the Constitution, as may be permissible. Entertaining such a grievance in the garb of a bail application would amount to expanding the scope of Section 439 beyond its legislative intent.

4. In light of the above settled legal position, this Court refrains from entering into the merits of the rival allegations or examining the correctness of the order impugned. It is clarified that all questions of fact and law raised by the applicant are expressly kept

open, so that he may pursue them in appropriate proceedings before the competent forum.

5. On instructions, the learned counsel for the applicant seeks permission to withdraw the present bail application with liberty to take recourse to proper proceedings in law. Such liberty deserves to be granted.

6. Accordingly, the present bail application stands disposed of as withdrawn, with liberty to the applicant to adopt such proceedings as are open to him in law.

(AMIT BORKAR, J.)