

Shabnoor

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

BAIL APPLICATION NO.1998 OF 2025

Mohammed Kamran Shaikh @
Kamran Abdul Aziz Shaikh

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Anjali Awasthi a/w Rachana Mahale for the
Applicant.

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

CORAM : AMIT BORKAR, J.

DATED : AUGUST 25, 2025

P.C.:

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

2. The prosecution case, in brief, is that the incident occurred on 21st December 2018, a Friday. On that day, the complainant, along with his father (the deceased), had gone to Kalina Jama Masjid around 1:15 p.m. for attending Jummah Namaz. At about

2:00 p.m., the complainant went home to pick up his brother Rahim, who was to travel to Delhi. On returning to the Masjid with Rahim, the complainant met three of Rahim's friends who were also scheduled to travel. The complainant purchased bread from a shop and gave 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 accused Amirshad Khan, sitting on a motorbike near the Masjid.

3. Around 2:40 p.m., while returning home, the complainant met his father near their residence. The deceased gave Prasad at home and thereafter proceeded to his shop. Very shortly thereafter, the complainant's aunt, Shahana Samir Khan, telephoned his mother and conveyed that the complainant's father had been killed. On hearing this shocking news, the complainant rushed to the shop and saw a crowd gathered near Bismillah Milk Centre. There, the complainant found his father lying in a pool of blood, his Activa scooter beside him, and nearby a knife, an iron rod and broken pieces of a plastic bamboo were also lying.

4. Upon inquiry, members of the public present at the spot informed that the assault was carried out at the instigation of Amirshad Khan. It is further alleged that his son, Azim Amirshad Khan, struck the deceased with an iron rod; Zahid Amirshad Khan attacked him with a knife; and two unknown persons used a knife and plastic rod in the assault. Based on this information, the complainant lodged the FIR.

5. The learned counsel appearing for the applicant submitted that the allegations against the present applicant stand on the same footing as that of some co-accused who have already been enlarged on bail. He referred to the order of this Court in Bail Application No. 1882 of 2025 dated 6th May 2025, whereby co-accused Zahidshad Umarshad Khan @ Jahidshad was released on bail. He also relied upon the order of the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 7496 of 2025 dated 1st August 2025, granting bail to co-accused Mohinuddin @ Guddu Shaikh. According to him, the role attributed to the applicant is either identical to, or even less grave than, the role of Mohinuddin @ Guddu Shaikh, who is alleged to have caused the main injury to the deceased. On this ground of parity, it was urged that the applicant also deserves to be released on bail.

6. Apart from the ground of parity, it was also submitted that the applicant has been in judicial custody since 13th May 2019, thereby having undergone incarceration for more than six and a half years. In the backdrop of the fact that the trial is not likely to conclude in the near future, it was contended that further detention of the applicant would amount to undue hardship and continued deprivation of his liberty.

7. Per contra, the learned APP has opposed the application. It is contended that the case of the present applicant cannot be equated with that of the co-accused who have been granted bail, since the role attributed to the applicant is distinct and materially different. The prosecution has specifically alleged that the applicant is one of the principal assailants who directly caused injuries to the

deceased during the incident. Considering the seriousness of the offence and the nature of allegations, it is submitted that this is not a fit case for exercise of discretion in favour of the applicant.

8. I have carefully considered the rival submissions and also perused the material placed on record. At the outset, it is not in dispute that certain co-accused, namely Zahidshad Umarshad Khan @ Jahidshad, have been granted bail by a Co-ordinate Bench of this Court, and co-accused Mohinuddin @ Guddu Shaikh has been released on bail by the Hon'ble Supreme Court. The allegations attributed to the present applicant are not shown to be graver than those against the said co-accused. On the contrary, the role of the applicant appears to be on a similar footing. In such circumstances, the principle of parity is clearly attracted.

9. It is also to be noted that the applicant has remained in custody since 13th May 2019, which is a period of more than six and a half years. Though the charge-sheet has been filed, the trial has not commenced in full swing, and in view of the number of witnesses and the nature of the case, its early conclusion does not appear likely. Thus, continued detention of the applicant, when co-accused similarly situated have already been enlarged on bail, would amount to denial of the right to personal liberty guaranteed under Article 21 of the Constitution of India.

10. The objection raised by the learned APP that the role of the applicant is distinct and serious cannot be ignored. However, once the Court has already exercised its discretion to release co-accused alleged to have played equally or even more serious roles, the

applicant cannot be singled out for continued incarceration. The settled position of law is that while considering bail, the Court has to balance the seriousness of allegations with the constitutional guarantee of liberty, particularly when the trial is unlikely to be concluded in the near future.

11. Having regard to the principle of parity, the prolonged period of incarceration, and the fact that the applicant's continued detention is not justified when co-accused have been granted bail, I am of the considered opinion that this is a fit case to exercise discretion in favour of the applicant. Needless to state, the applicant shall abide by strict conditions to ensure that he does not misuse the liberty.

12. Hence, the following order is passed.

(i) Applicant Mohammed Kamran Shaikh @ Kamran Abdul Aziz Shaikh is directed to be released on bail on furnishing PR. 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.)