

Shabnoor

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

BAIL APPLICATION NO. 2115 OF 2025

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Mohd Iqbal (Guddu) Mustakeen Shaikh ... Applicant
V/s.
 State of Maharashtra ... Respondent

Mr. Devang Thakkar with Akshay P Kataria, for the applicant.

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

Mr. Sambhaji Mane, PSI, Kalyan Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 31, 2025

P.C.:

1. The present application is filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 439 of the erstwhile Criminal Procedure Code, 1973), seeking regular bail in connection with Crime Register No. I-744 of 2023 registered at Kalyan Taluka Police Station, for the alleged commission of offence punishable under Section 302 of the Indian Penal Code, 1860, which pertains to the offence of murder.

2. The case of the prosecution, in brief, is that on 11th December 2023 at about 1:00 p.m., at Mouje Kamba, Taluka Kalyan, the applicant is alleged to have committed the murder of

one Abdulahmed Mohammed Faruq Shaikh by assaulting him with a sharp-edged weapon. The injuries were inflicted on vital parts of the body such as the face, chin, stomach, private parts, and the back of the head. It is alleged that the injuries were grievous and proved fatal.

3. The learned advocate appearing for the applicant has submitted that the entire case of the prosecution rests upon circumstantial evidence, particularly two elements—‘last seen’ theory and Call Detail Records (CDR). It is submitted that the only material against the applicant is that he was allegedly seen in the company of the deceased at a wine shop located around 2 kilometers away from the place of occurrence, prior to the incident. It is further contended that although the CDR analysis suggests that the mobile phone of the applicant was active in the same area as the deceased around the relevant time, there is no other independent evidence, such as eyewitness account or forensic proof, that directly links the applicant to the commission of the offence.

4. The learned advocate further submits that the applicant is a labourer by occupation and belongs to a humble background. He has no prior criminal antecedents, and nothing on record suggests that he may attempt to tamper with the evidence or influence the prosecution witnesses. The applicant is in custody since his arrest, and the investigation is already complete. Hence, it is prayed that this Court may exercise its discretion to grant bail to the applicant on appropriate terms and conditions.

5. On the contrary, the learned Additional Public Prosecutor (APP) strongly opposes the application. It is submitted that the material collected during the investigation prima facie establishes the applicant's involvement. It is pointed out that the applicant was last seen with the deceased on the night prior to the incident, and the CDR records show that both were present in the vicinity of the crime scene at the relevant time. The learned APP further invites attention to the disclosure statement recorded under Section 27 of the Indian Evidence Act, 1872 (now Section 57 of the Bharatiya Sakshya Adhiniyam, 2023), wherein the applicant allegedly confessed that while consuming liquor, an altercation took place between him and the deceased, who was speaking loudly on a mobile phone. It is alleged that in the heat of the moment, the applicant assaulted the deceased with a stone, which was later recovered at the instance of the applicant, based on his disclosure. Relying on the above circumstances and particularly the recovery made pursuant to the applicant's own statement, the learned APP contends that there is a prima facie case of murder against the applicant. Given the nature of the offence and the seriousness of the allegations, it is prayed that the application for bail be rejected.

6. I have carefully considered the rival submissions advanced by the learned advocate for the applicant and the learned Additional Public Prosecutor. I have also gone through the material placed on record, including the FIR, case diary, statement under Section 57 of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding to Section 27 of the Evidence Act), and other

investigation papers.

7. It is not in dispute that the entire case of the prosecution is based on circumstantial evidence. The two primary circumstances relied upon by the prosecution are: (i) the applicant was allegedly last seen with the deceased prior to the incident, and (ii) the Call Detail Records (CDRs) indicate that the applicant and the deceased were present in the same geographical location shortly before the alleged offence.

8. At this stage, it may be noted that the 'last seen' theory, though a relevant piece of evidence, cannot be the sole basis for conviction or prolonged pre-trial detention, unless it is closely linked with other incriminating circumstances, such as motive, recovery, or eyewitness testimony. The mere fact that the applicant and the deceased were seen together or were in proximity as per CDR does not, by itself, establish that the applicant committed the murder.

9. As far as the alleged disclosure statement is concerned, it is stated that the applicant led the police to the spot and a stone, purported to be the weapon of assault, was recovered. However, at this stage, no forensic report or bloodstain analysis has been placed on record to link the said stone with the deceased or the crime. The admissibility and evidentiary value of the said statement can only be appreciated during trial, after proper scrutiny and testing by way of cross-examination.

10. Further, it is not the case of the prosecution that the applicant has any criminal antecedents or that he poses any threat

to public peace or witnesses. The applicant is admittedly a labourer by occupation, having local roots and a permanent place of residence. It is also not the case of the prosecution that he has attempted to flee from justice or has misused the liberty during the course of investigation.

11. The applicant is in custody since 12th December 2023, and the charge-sheet appears to have been filed. Thus, the custodial interrogation of the applicant is no longer necessary. The trial is likely to take considerable time. Continued incarceration, particularly when the evidence is not of a conclusive nature at this stage, would amount to pre-trial punishment, which is impermissible in law.

12. In view of the totality of circumstances, this Court is of the opinion that the applicant has made out a case for grant of bail, and it would be just and proper to enlarge him on bail, subject to suitable conditions to ensure his presence during trial and to safeguard the interest of justice.

13. In view of the above discussion, the following order is passed:

(i) The Bail Application is allowed.

(ii) The applicant shall be released on bail in connection with Crime Register No. I-744 of 2023 registered with Kalyan Taluka Police Station for offences punishable under Section 302 of IPC, upon furnishing a Personal Bond of ₹25,000/- (Rupees Twenty-Five Thousand only) 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 applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness, particularly family members of the deceased.

(b) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(c) The applicant shall report to the Kalyan Taluka Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.

(d) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.

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

(f) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number 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.

14. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)