

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2164 OF 2025

Hafizullah Sohbat Ali Khan ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Ms. Aafreen Shaikh with Ms. Nikhat Shaikh for the applicant.

Mrs. Mahalakshmi Ganapathy, APP, for the respondent-State.

Mr. Mahesh Anjanwad, PSI, Shivajinagar Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 11, 2025

P.C.:

1. By the present application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the applicant is seeking regular bail in connection with Crime Register No.581 of 2024, registered with Shivajinagar Police Station, for the offences punishable under Sections 103(1) and 61 of the Bharatiya Nyaya Sanhita, 2023, read with Sections 4 and 25 of the Arms Act, and Sections 37(1)(a), 135, and 142 of the Maharashtra Police Act.

2. As per the case of the prosecution, on 10th August 2024, between 7.00 a.m. and 7.30 a.m., the first informant approached the Shivajinagar Police Station and lodged the FIR. It is alleged that on the said date, Sahil Israfil Shah, Ali Khan, and Israfil Ansari

assaulted the informant's brother, Ahmed, using sharp-edged weapons, and thereby caused his death. The FIR further mentions that there was a dispute going on for a few days prior to the incident between the deceased and the main accused Sahil over some trivial matters. It is alleged that the present applicant, who is the uncle of accused Sahil, had made a threatening phone call to the informant a few days before the incident. On the basis of this, the prosecution claims that the present applicant was the instigator of the said assault and subsequent murder.

3. Learned Advocate appearing for the applicant submitted that the only allegation against the applicant is that he had threatened the informant over the phone a few days before the incident and that the main accused is the applicant's nephew. It is argued that at the most, the prosecution seeks to portray that the applicant had instigated the assault. It is further submitted that the actual assault was carried out by Sahil and others, and there is no direct overt act attributed to the present applicant in the commission of the murder. Except for the reference to antecedents of the applicant, there is no material on record to establish his active participation. Learned Advocate therefore submitted that the applicant be released on bail as he is not likely to tamper with evidence or influence witnesses.

4. On the other hand, learned APP has strongly opposed the bail application. It is submitted that the applicant is named in the FIR and has a direct role in the matter. It is contended that the applicant had issued a death threat to the informant two days before the murder, and that the motive behind the killing arose

from the dispute between the informant and the applicant's nephew. The prosecution alleges that the assault was carried out at the instance of the applicant and hence his role cannot be said to be peripheral. It is further submitted that the applicant has as many as 33 criminal antecedents to his discredit, which indicates a habitual tendency to indulge in criminal activities. Therefore, it is prayed that no indulgence be shown to the applicant and the bail application be rejected.

5. I have considered the submissions advanced by the learned Advocate for the applicant and the learned APP for the State. I have also gone through the material placed on record, including the FIR and the case papers.

6. It is true that the applicant is named in the FIR and an allegation has been made that he had threatened the informant a few days prior to the incident. However, the actual role of assault and commission of murder has been attributed to co-accused persons Sahil, Ali Khan, and Israfil Ansari. There is no material on record to show that the applicant was present at the scene of offence or that he participated directly in the commission of the offence. The role of the applicant is confined to an alleged telephonic threat and an inference that the assault took place at his instance, which will require trial and detailed scrutiny of evidence.

7. So far as the criminal antecedents of the applicant are concerned, while they are indeed relevant, the same cannot be the sole ground to deny bail in the absence of strong prima facie

material connecting the applicant to the actual commission of the offence. The antecedents may at best be a factor in assessing the possibility of misuse of liberty, which can be safeguarded by imposing strict conditions.

8. It is also pertinent to note that the investigation is stated to be completed, and the applicant is in custody since a considerable time. The chargesheet has already been filed. Therefore, continued custodial detention of the applicant may not be necessary, especially when no recovery or further investigation remains qua the applicant.

9. In such circumstances, this Court is of the view that the applicant deserves to be enlarged on bail by imposing suitable conditions to ensure that he does not misuse the liberty or tamper with prosecution witnesses.

10. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.581 of 2024 registered with Shivajinagar Police Station for offences punishable under Sections 103(1), 61 of the Bhartiya Nyaya Sanhita, 2023 read with Sections 4 and 25 of the Arms Act and Sections 37(1)(a), 135, 142 of the Maharashtra Police Act , upon furnishing cash surety in the amount of Rs.50,000/- (Rupees Fifty Thousand Only);

iii) Within a period of four weeks after the release of applicant on bail, the applicant shall furnish one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

a) The applicant shall report the Shivajinagar Police Station, Mumbai on first Monday of every month between 10.00 a.m. to 12.00 noon, until further orders.

b) The applicant shall not tamper with evidence, and directly or indirectly contract, influence, threaten, or intimidate any witness, particularly family members of the deceased.

c) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.

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

e) The applicant shall not indulge in any criminal activity during the pendency of the trial.

f) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.

11. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)