

AGK

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

BAIL APPLICATION NO.2169 OF 2025

Hero @ Balu S/o. Jagjeevanlal Jaiswal ... Applicant

V/s.

The State of Maharashtra ... Respondent

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Mr. Anand Chawre with Ms. Yogita A. More for the applicant.

Ms. Supriya I. Kak, APP for the respondent-State.

Mr. Pravin Dharma Kamte, Head Constable, Boisar Police Station, Palghar, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 15, 2025

P.C.:

1. By the present bail application filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, "BNSS"), the applicant is seeking regular bail in connection with Crime Register No. 379 of 2024 registered with Boisar Police Station for alleged offences punishable under Section 109 read with Section 3(5) of the BNSS.

2. The brief facts of the prosecution case are as follows: The present applicant has been arrested and arraigned as Accused No.3 in the said crime, which came to be registered at the instance of informant Pradip Yadav. As per the case of the prosecution, the informant has alleged that Accused Nos. 1, 2 and 3 (the applicant)

jointly assaulted him and inflicted knife blows, following a dispute that occurred during and after a birthday party organized by Accused No.1.

3. The allegations are primarily based on three statements recorded during the course of investigation — namely, (i) the First Information Report (FIR), (ii) the supplementary statement of the informant, and (iii) a further statement under Section 183 of the BNSS. It is revealed from these statements that the informant and the accused persons were acquainted with each other even prior to the incident dated 16 August 2024.

4. On the said date, Accused No.1 Kaushalkumar Paswan had hosted a birthday party at Hotel Panara, Boisar, District Palghar, from around 3.00 p.m. to 8.00 p.m., which was attended by the informant, one witness Mayank Singh, and the other co-accused Abhay @ Kalu (Accused No.2) and the present applicant Hero @ Balu (Accused No.3). During the course of the party, a verbal altercation occurred between the informant and Accused No.2.

5. It is further alleged that after the party, while the group was on their way back and had stopped at Dhandipada — either to relieve themselves or for another round of drinks — another quarrel ensued, which took a violent turn. At that time, Accused No.2 Kalu allegedly inflicted knife injuries on the informant.

6. Learned Advocate appearing for the applicant has submitted that the primary role of assault is attributed to Accused No.2 (Kalu), and the material on record including the FIR, witness statements, and the statement recorded under Section 164 of the

Code of Criminal Procedure, 1973, clearly show that the applicant did not inflict any injuries. The only allegation against the applicant is that he was present with Kalu at the time of the incident.

7. It is further submitted that the applicant was arrested on 7 August 2024, and has been in custody since then. The applicant does not have any prior criminal antecedents, and no overt act is attributed to him except his presence. It is argued that mere presence without active participation does not amount to common intention, and in such circumstances, the applicant deserves to be released on bail.

8. On the other hand, the learned APP has strongly opposed the grant of bail. She submitted that although the applicant is not alleged to have inflicted knife blows himself, he was present throughout and accompanied the main assailant, which indicates a pre-arranged plan and shared intention to commit the offence. The learned APP has further argued that from the overall conduct of the accused persons, it appears that the act was committed in furtherance of common intention, and hence Section 34 of the Indian Penal Code becomes applicable by implication. She also pointed out that during the hearing before the learned Sessions Judge, a reference was made indicating that some person had attempted to offer money to the informant to withdraw the case, which shows that there is an attempt to influence witnesses, and such a possibility cannot be ruled out if the applicant is released on bail. Therefore, it is submitted that the application deserves to be rejected.

9. I have considered the rival submissions made by the learned Advocate for the applicant and the learned APP for the State. I have perused the First Information Report, the statements of the informant, as well as the statement recorded under Section 183 of the BNSS.

10. At the outset, it is to be noted that the role of actual assault with knife is attributed specifically to Accused No.2 – Kalu. There is no allegation that the applicant (Accused No.3) was armed or that he instigated or physically participated in the act of stabbing. The only allegation against the applicant is that he accompanied the co-accused at the relevant time. The FIR and the other statements do not indicate any overt act or specific role played by the applicant in the alleged assault.

11. While it is true that common intention can develop even on the spot, in the present case, the material placed on record does not prima facie disclose sufficient circumstances to indicate that the applicant had shared a common intention with Accused No.2 to cause injury to the informant. The mere presence of the applicant at the scene of offence, without any specific role or conduct suggestive of pre-concert or active participation, cannot by itself be sufficient to attract the rigours of Section 34 of the Indian Penal Code, especially at the stage of considering bail.

12. The applicant has been in custody since 7 August 2024, and it is not shown that his further incarceration is necessary for the purpose of investigation or that his release would pose any threat to the witnesses. No previous criminal record is attributed to the

applicant. The prosecution has also not brought on record any direct evidence to show that the applicant was involved in influencing the witnesses, apart from a vague reference in the Sessions Court order which does not specifically name the present applicant.

13. In view of the above discussion, and particularly keeping in mind that the applicant is not the main assailant, that he has no criminal antecedents, and that the trial is likely to take time, this Court is of the considered opinion that the applicant is entitled to be enlarged on bail, subject to appropriate conditions to ensure his presence at the trial and to secure the ends of justice.

14. 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 No.379 of 2024 registered with Boisar Police Station for offences punishable under Section 109 read with Section 3(5) of the BNSS, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with 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 Boisar Police Station 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 the evidence or

attempt to influence any witness, directly or indirectly.

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) The applicant shall provide his current address of residence, mobile number and other details to the investigating officer, and shall inform if there is any change.

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

15. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)