

Shabnoor

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

BAIL APPLICATION NO.2172 OF 2025

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Vikas Gulabdhhar Yadav

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Gaurav Chaubey i/by Ms. Kavitha Prakash for the applicant.

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

Ms. Usha Khose, PSI Pairavi Officer, MHB Colony Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 29, 2025

P.C.:

1. By the present application preferred under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), the applicant seeks his release on regular bail in connection with Sessions Case No.266 of 2022 arising out of Crime Register No.798 of 2021 registered with MHB Colony Police Station, Mumbai. The applicant is facing prosecution for offences punishable under Sections 302, 397, 506(2) and 34 of the Indian Penal Code, 1860 (for short, “IPC”) and Sections 3 and 25 of the Arms Act, 1959.

2. The prosecution case, in brief, is that on 29th December 2021 at about 15:27 hours, two unknown persons wearing masks

entered the Dahisar Branch of the State Bank of India. At that time, one Mr. Sandesh Gomane, working as a messenger in the said bank, approached them. Accused No.1, who was armed with a firearm, opened fire and shot Mr. Gomane in the chest. The injured victim slumped into his chair, holding his chest in pain.

3. Thereafter, Accused No.1 threatened the staff and customers present in the bank by pointing the firearm towards them and warned them not to intervene, failing which he would shoot. Simultaneously, Accused No.2, i.e., the present applicant, is alleged to have gone behind Counter No.2, where the informant was seated. Accused No.1 picked up a sack kept near the computer table and proceeded to forcibly remove cash worth ₹2,70,000/- from the cash drawer, which he stuffed into the said sack. After executing the robbery, both the accused fled the scene. Mr. Gomane was immediately rushed to the hospital but was declared brought dead.

4. Learned counsel appearing for the applicant submitted that the role attributed to the applicant is of merely accompanying Accused No.1 during the commission of the said robbery. It is urged that, even as per the prosecution, it was Accused No.1 who was armed with the firearm, who opened fire and caused the death of the victim, and who forcibly removed the cash from the drawer. There is no material on record to demonstrate that the applicant shared the intention to cause murder. It is further submitted that both accused persons had covered their faces at the time of the offence, and consequently, the applicant could not be identified by any of the witnesses in the Test Identification Parade

(TIP). The recovery of the firearm, the robbed amount, and the sack used in the commission of the offence was effected from Accused No.1 alone. Insofar as the applicant is concerned, the only recovery shown is of ₹54,600/-, which was allegedly found at his residence two days after his arrest. The applicant has no past criminal antecedents. He has been incarcerated for more than three years and nine months. It is pointed out that the charges in the Sessions Case have not yet been framed, and hence, the trial is unlikely to commence in the near future. In such circumstances, continued incarceration of the applicant would amount to pre-trial punishment.

5. On the other hand, learned Additional Public Prosecutor strongly opposed the grant of bail. She drew the Court's attention to the statement of the key prosecution witness, a cashier in the bank, who has given a vivid account of the incident on the very same day. The witness has categorically stated that two persons entered the bank, one holding a pistol (identified as Accused No.1), and the other person (subsequently identified as the present applicant) followed him. Accused No.1 fired at the deceased and warned everyone not to move. Meanwhile, the applicant entered the cashier's cabin from behind, aiding in the commission of robbery. Accused No.1 collected the cash in a sack, and when the cashier did not respond to their demand for the locker keys, both accused fled together. It is submitted that their coordinated actions clearly show that both accused shared the common intention of committing robbery and causing terror, and also to eliminate any resistance, as evident from the fatal shooting.

6. The learned APP further placed reliance on the decision of the Supreme Court in *Virendra Singh v. State of Madhya Pradesh*, (2010) 8 SCC 407, wherein the principles underlying Section 34 IPC have been authoritatively explained by referring to the landmark judgment in *Barendra Kumar Ghosh v. King Emperor*, AIR 1925 PC 1. It was held that actual physical participation is not necessary for Section 34 to apply. It is sufficient if the accused had the intention to commit the act and aided or facilitated its execution. The doctrine of common intention is attracted where the criminal act is done in furtherance of the shared intention of all accused persons. Thus, it is not material as to who fired the shot or who physically removed the cash, what matters is the pre-concert and the simultaneous meeting of minds to commit the offence. Participation can be inferred from the conduct before, during and after the occurrence.

7. Having considered the submissions advanced on behalf of the applicant and the learned APP, and upon perusal of the material placed on record, this Court is not inclined to grant bail to the applicant for the following reasons.

8. The allegations levelled against the applicant are of extremely serious and grave nature. The incident involves an armed robbery inside a public bank, which was executed in a pre-planned and organized manner by two accused persons, resulting in the death of a bank employee. The act of entering the bank with faces masked, one accused being armed with a pistol, shooting an unarmed employee in the chest, threatening the bank staff and looting a large amount of public money in broad daylight clearly

indicates a deliberate design to commit murder and robbery with preparation to cause death.

9. From the statement of the cashier, which was recorded promptly on the same day of the incident, it becomes clear that the present applicant (accused No.2) did not remain a mere bystander during the occurrence of the offence. On the contrary, he played an active and purposeful role in the execution of the crime. The cashier has categorically stated that after Accused No.1 entered the bank and fired at the bank employee, the applicant simultaneously entered the cashier's cabin from behind and assisted in the commission of the robbery. This clear role attributed to the applicant is not only corroborated by the ocular testimony of the eyewitness but also gets strengthened by his identification in the Test Identification Parade.

10. The sequence of events, as narrated by the witness, shows that both the accused were acting in tandem and in a planned manner. While Accused No.1 threatened everyone with a pistol and created fear to paralyze any resistance, the applicant entered the area where the cash was kept and participated in the act of looting. This division of roles, one instilling terror and the other aiding in taking the money, points towards an organized and calculated plan.

11. Such coordinated conduct leaves little doubt about the existence of a prior agreement and common design between both accused persons. In other words, their actions clearly reflect a meeting of minds and mutual understanding to commit dacoity

using deadly force, if necessary. This satisfies the legal requirement under Section 34 of the Indian Penal Code, which deals with acts done by several persons in furtherance of a common intention. Physical presence at the scene, coupled with conduct showing joint participation, is sufficient to infer common intention.

12. Hence, the participation of the applicant cannot be viewed in isolation or in a diluted manner merely because he was not the one holding the firearm. The law is settled that every participant in a jointly committed offence can be held equally liable for the acts done in furtherance of the shared intention. The material on record, particularly the eyewitness account, establishes a prima facie case of the applicant's active and intentional involvement in the grave offence of armed dacoity and murder, thereby disentitling him from the grant of bail at this stage.

13. The contention raised by the learned Advocate for the applicant that there is no material to establish a common intention for murder, and that it was only Accused No.1 who fired, cannot be accepted at this stage. The doctrine of common intention under Section 34 IPC has been consistently interpreted by the Supreme Court to mean that physical presence at the scene of offence and participation in the criminal act in furtherance of the common intention is sufficient to attract liability, even if the act of firing was done by another accused.

14. It is the specific case of the prosecution that the applicant, along with Accused No.1, had entered the premises of State Bank of India, Dahisar Branch, armed with a predetermined plan to rob

the bank and silence any resistance with violence. From the narration of the events by the eyewitness cashier, who was present in the bank during the incident, it appears that the applicant had actively participated by entering the cashier's cabin and aiding Accused No.1 in forcibly taking out the cash and filling it in a sack. These overt acts, read with the sequence of events, *prima facie* demonstrate a well-coordinated operation and the existence of *common intention*.

15. The law on *Section 34 IPC* is well-settled. In *Virendra Singh v. State of Madhya Pradesh*, (2010) 8 SCC 407, the Supreme Court, after considering the precedents including the celebrated decision in *Barendra Kumar Ghosh v. King Emperor*, AIR 1925 PC 1, held that it is not necessary that every accused should do the same act or carry the same weapon. What is essential is a pre-arranged plan and a concert of action. The Court observed that the essence of *Section 34 IPC* lies in the existence of a common intention and some active participation by the accused in the commission of the criminal act in furtherance of that common intention.

16. In *Barendra Kumar Ghosh (supra)* facts as disclosed were that on 3 August 1923, the Sub-Postmaster at Sankaritolla Post Office, while counting money, was shot and killed during an attempted robbery. Several men had entered the back room of the post office and fired pistols at the Sub-Postmaster, who died on the spot. Though no money was taken, the assailants fled. One of them, the appellant *Barendra Kumar Ghosh*, was captured immediately thereafter while discarding a German-made pistol

that matched the bullet found in the deceased's body. The appellant was charged with murder under Section 302 IPC, and voluntarily causing hurt during robbery under Section 394 IPC. At trial, the accused argued that the appellant neither fired the fatal shot nor participated in the murder. He claimed to have stood outside the door in fright and denied assaulting anyone. However, he pleaded guilty to robbery.

17. The Privy Council gave a comprehensive exposition of Section 34 IPC observing that Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself. The expression "that act" and "the act" in the section must be read as referring to the entire "criminal act" mentioned in the first part of the section. The section does not require proof that each individual did the precise act that caused the death. It presupposes joint participation with a common intention, regardless of whether each actor did the ultimate fatal act. When several persons participate in a criminal act with a common intention, and in furtherance of that intention the act is completed, each of them is liable for the act as if he alone had committed it. It is immaterial whether one individual fired the fatal shot, so long as all were acting jointly in furtherance of the common intention. The Court rejected the narrow view as taken in *Emperor v. Nirmal Kanta Roy*, ILR 41 Cal 1072 that only the person who committed the fatal act is liable under Section 302 IPC. The broader view endorsed here is that vicarious criminal liability under Section 34 arises from joint action in furtherance of

common intention, even if individual roles differ.

18. The judgment in *Barendra Kumar Ghosh* is a landmark authority on the doctrine of constructive liability under Section 34 IPC. It clarifies that liability is not dependent on who did what, but on the commonality of intention and participation. The IPC intends to ensure that collective criminal behaviour is appropriately penalised. The doctrine ensures that criminal responsibility cannot be evaded merely by showing technical distinctions in individual roles, where a common plan and execution exist. The Privy Council thus affirmed the appellant's conviction under Section 302 read with Section 34 IPC.

19. Applying the above principles to the facts of the present case, the coordinated movements of the applicant and Accused No.1, the use of deadly force, and the calculated withdrawal from the scene establish a strong prima facie case of shared intent and execution.

20. Coming to the prayer for bail, it is a settled principle that while considering bail in cases involving serious offences such as murder under Section 302 IPC and robbery with deadly weapon under Section 397 IPC, the Court must balance the right to liberty of the accused with the collective interest of society and the severity of the offence.

21. In the present case, the nature of accusations is extremely grave; the crime was committed in public view with arms; an innocent person was shot dead; and the manner in which the act was carried out is capable of causing alarm and fear in the minds of the general public. Furthermore, the applicant has been

identified in the Test Identification Parade and ₹54,600/- has been recovered from his residence. The possibility of the applicant tampering with evidence or attempting to pressurize witnesses cannot be ruled out at this stage.

22. The argument of the applicant that the charge is not yet framed and that he has undergone a substantial period of incarceration cannot be a ground to grant bail when the allegations are of such serious nature involving Section 302 IPC and when the trial is delayed not due to fault of the prosecution, but owing to pendency of cases and procedural timelines. The right to speedy trial, though fundamental, has to be balanced against the nature and gravity of the offence, the interest of the victim's family, and the impact on public confidence in the criminal justice system.

23. The offence in question not only resulted in the loss of an innocent life but also posed a serious threat to public order, safety, and institutional trust in banks. If persons accused of committing such heinous crimes are released on bail, it may send a wrong signal to the society and may also adversely affect the morale of the witnesses, particularly the bank staff who were present and have directly implicated the applicant in their statements. The possibility of tampering with evidence or influencing witnesses cannot be ruled out.

24. This Court is, therefore, of the considered opinion that the applicant has not made out a case for exercise of discretion in his favour for grant of bail, especially when the evidence collected

during investigation prima facie supports the prosecution case, and when the nature of the crime is grave, involving well-planned armed robbery and cold-blooded murder in a public place.

25. In view of the above discussion, the gravity of the offence, the active and coordinated role of the applicant, the material showing prima facie involvement, and the settled legal position governing Section 34 IPC and serious offences under Sections 302 and 397 IPC, this Court is not inclined to exercise discretion in favour of the applicant at this stage.

26. Hence, the present application for bail is rejected.

(AMIT BORKAR, J.)