

Shabnoor

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

BAIL APPLICATION NO. 2260 OF 2025

Shahabaj Mo. Sharafat Ali Khan	... Applicant
V/s.	
State of Maharashtra	... Respondent

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Mr. Fakhruddin Khan a/w Ms. Saima Ansari, for the applicant.

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

Mr. Waghmare, PI (I.O.) Rabale Police Station and Mr. Damgude, PSI, (Pairavi Officer), Wadala T. T. Police Station are present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 13, 2025

P.C.:

1. The present application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime Register No. 395 of 2021 registered with Wadala T.T. Police Station. The applicant has been charged for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, which relates to the allegation of committing murder with the aid of common intention.

2. As per the prosecution, on the date of the incident, the police received information about an injured person lying near the

parking area beside an autorickshaw. Upon reaching the spot, they found one Mr. Farooq Abdul Kadar Ansari in an injured condition. He was immediately shifted to the hospital for treatment. However, during the course of treatment, he succumbed to his injuries. The investigation revealed that the applicant, along with co-accused persons, had assaulted the deceased. Based on this information, the First Information Report came to be lodged against the applicant and the co-accused for the aforesaid offence.

3. Learned Advocate for the applicant submitted that the applicant has been in custody since 23rd November 2021. It is argued that the entire case of the prosecution is based on circumstantial evidence and that two of the co-accused have already been released on bail. According to him, the prosecution has not clearly segregated or specified the individual role of each accused, thereby making it doubtful whether the applicant's role has been independently established. It is submitted that in the absence of a complete chain of circumstances pointing towards the guilt of the applicant, he is entitled to be released on bail.

4. It is further argued that except for the recovery of a knife and some clothes, and the statement of one witness claiming to have seen the applicant after the incident, there is no direct evidence to connect the applicant with the alleged crime. According to the applicant, such material is insufficient to sustain continued detention, particularly when co-accused have been granted bail. On these grounds, it is prayed that the applicant be enlarged on regular bail.

5. On the other hand, the learned APP opposed the application. It is contended that the recovery of the weapon and the clothes at the instance of the applicant clearly distinguishes his case from that of the co-accused who have been released. Furthermore, the statement of the prosecution witness indicates that immediately after the incident, the accused persons, including the applicant, were seen together by the witness, which, according to the prosecution, completes the chain of circumstances. In such a situation, it is submitted that the applicant does not deserve the discretionary relief of bail.

6. I have carefully considered the rival submissions and perused the material on record. It is not in dispute that the case of the prosecution rests entirely on circumstantial evidence. It is a settled principle of criminal law that in cases based on circumstantial evidence, the prosecution must establish a complete chain of circumstances which unerringly points towards the guilt of the accused and rules out every hypothesis consistent with innocence.

7. In the present case, apart from the recovery of a knife and certain clothes allegedly at the instance of the applicant, and the statement of one witness claiming to have seen the applicant after the incident, there is no direct evidence linking the applicant to the act of assault which resulted in the death of the deceased. Whether the recovered articles were indeed used in the commission of the offence is a matter which can be established only during trial.

8. It is also an admitted position that two of the co-accused, who are alleged to have acted in furtherance of common intention

along with the applicant, have already been granted bail. The prosecution has not clearly distinguished the role of the applicant from that of the released co-accused. In such circumstances, the principle of parity would operate in favour of the applicant, unless there are exceptional circumstances to deny him the same relief. No such exceptional circumstance has been pointed out.

9. The applicant has been in custody since 23rd November 2021, i.e., for nearly three years. There is no material to show that the trial is likely to conclude in the immediate future. Prolonged pre-trial detention, especially in cases where the evidence is primarily circumstantial, tilts the balance in favour of granting bail, keeping in view the constitutional guarantee of a speedy trial under Article 21 of the Constitution of India.

10. The prosecution has not brought on record any material to indicate that the applicant has attempted to influence witnesses or tamper with the evidence. The apprehension of the applicant absconding can be taken care of by imposing stringent conditions, including surrendering his passport (if any) and marking regular attendance before the concerned police station.

11. Having regard to the totality of circumstances, the absence of direct evidence, the grant of bail to co-accused, the period of incarceration already undergone, and the stage of trial, I am of the opinion that the applicant has made out a case for grant of bail. The application deserves to be allowed with suitable conditions to ensure his presence during trial and to safeguard the prosecution case.

12. In view of the above discussion and legal position, the following order is passed:

(a) The applicant shall be released on bail in connection with Crime Register No. 395 of 2021 registered with Wadala T. T. Police Station for offences punishable under Sections 302 read with 34 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:

(b) The applicant shall attend the concerned police station once in a month i.e. on first Saturday between 11:00 a.m. to 2:00 p.m. till framing of charge.

(c) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

13. The Bail Application is allowed in the aforesaid terms and is accordingly disposed of.

(AMIT BORKAR, J.)