

Shabnoor

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

BAIL APPLICATION NO.2545 OF 2025

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Ruksana Dilshad Hussain Sayyed ... Applicant
V/s.
State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.2680 OF 2025**

Ishaq A Beg & Anr. ... Applicants
V/s.
State of Maharashtra ... Respondent

Mr. Husen Shaikh a/w A/ Pavaskar, for the applicant.
Mr. Sunil Lalla for the Intervener.
Mr. Prasanna P. Malshe, APP for the State – respondent.
Mr. Vikas Mali, PSI, Kurla Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 23, 2025

P.C.:

1. The present application for bail has been filed by the applicant under the provisions of Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking her release in connection with Crime Register No. 670 of 2024, registered with Kurla Police Station, Mumbai. The applicant has been booked for offences punishable under Sections 103(1), 115(2), 189(1) and

(2), 190, and 352 of the Bharatiya Nyaya Sanhita, 2023 (BNS).

2. Briefly stated, the case of the prosecution is that on 27th December 2024, at about 8:15 a.m., at 64, Husaini Compound, Match Factory Lane, Kurla (West), Mumbai, the applicant along with co-accused Nos. 1 to 5 allegedly formed an unlawful assembly with a common object. In furtherance of said common object, they are stated to have abused the deceased, Mr. Kasam Hussain Mirza Baig, and his wife Mrs. Momina Ishaq Baig, using filthy and threatening language, and thereafter assaulted them with their hands.

3. The further case of the prosecution is that accused No.1 Safadar and accused No.3 Wasif sat on the chest of the deceased and pressed his neck, thereby causing his death by strangulation. It is specifically alleged that accused No.2 Shabrej, accused No.4 Roshan Zahera, and the present applicant – Ruksana (accused No.5), actively prevented the complainant and other eyewitnesses from intervening or rescuing the victim. It is alleged that the present applicant held the complainant by her hair and assaulted her, thereby obstructing the attempt to save the deceased. After the incident, a First Information Report was lodged at Kurla Police Station. The applicant had earlier approached the learned Sessions Court for bail, which came to be rejected, and being aggrieved thereby, the present application has been preferred before this Court.

4. Learned counsel appearing on behalf of the applicant has placed reliance on the statements of the eyewitnesses and other

material on record, and has submitted that the role attributed to the applicant is limited and does not directly connect her to the act of strangulation. It is submitted that the medical cause of death is asphyxia due to strangulation, and that whether the applicant shared the common intention with other co-accused, so as to attract Section 34 of the Indian Penal Code, is a matter to be adjudicated upon during the course of trial. It is further pointed out that the applicant has no criminal antecedents and is a woman, and therefore, deserves to be released on bail.

5. On the other hand, the learned Additional Public Prosecutor as well as the learned Advocate representing the victim's family have vehemently opposed the grant of bail. They have pointed out that the role of the applicant is not passive, but active, inasmuch as she is alleged to have physically restrained the complainant and other witnesses who were attempting to rescue the deceased. It is argued that the timely intervention of the eyewitnesses could have prevented the offence, and hence, the applicant's conduct facilitated the commission of the offence. It is therefore submitted that the applicant's act constitutes an overt act, which squarely attracts the ingredients of Section 34 IPC, as the assault and obstruction were allegedly committed in furtherance of the common intention shared by all the accused. In support of their arguments, reliance is also placed on certain judicial precedents, which clarify the scope and applicability of Section 34 IPC even in cases where the accused has not inflicted the fatal injury but has assisted in the commission of the offence by other overt acts.

6. I have carefully considered the submissions advanced by the learned counsel for the applicant, the learned APP for the State, and the learned advocate representing the victim. I have also gone through the statements of the witnesses and the material placed on record.

7. The offence alleged is undoubtedly serious in nature, as it involves the death of a person. However, it is well settled that mere gravity of the offence, by itself, cannot be the sole ground for rejection of bail, and that the role attributed to the individual applicant, the material collected against him/her, and the stage of trial, must all be taken into consideration while deciding an application for bail.

8. In the present case, the applicant is not alleged to have caused the fatal injury. The specific overt act attributed to the applicant, as per the prosecution, is that she restrained and assaulted the eyewitnesses who attempted to intervene. It is not the prosecution's case that the applicant strangled the deceased or was directly involved in the act of pressing his neck. The act alleged against the applicant appears to be incidental and not the direct cause of death.

9. It is also important to note that the question whether the applicant shared a common intention with the co-accused to commit the murder of the deceased is a matter that will be determined at the stage of trial, after appreciation of oral and documentary evidence by the trial court. At the stage of considering a bail application, this Court is not expected to

conduct a detailed analysis of evidence or to return a conclusive finding on the applicant's guilt or innocence. The scope of scrutiny is limited to forming a prima facie opinion based on the material presently available on record.

10. A careful examination of the statements of the eyewitnesses who are family members of the deceased recorded during investigation reveals that there are general allegations against the applicant of restraining and obstructing the complainant and others from intervening during the incident. However, there appears to be no specific or consistent version in the statements with regard to the exact nature, degree or timing of the obstruction allegedly committed by the applicant.

11. At this prima facie stage, it would not be appropriate for the Court to presume that the applicant acted in furtherance of the common intention to commit murder, when her alleged role is restricted to preventing intervention and not the commission of the actual homicidal act. The principle of criminal law requires that common intention under Section 34 IPC or the corresponding provision under BNS must be clearly established, and such inference cannot be drawn loosely, especially where the overt act is not directly linked to the main offence.

12. Therefore, in absence of clear, cogent, and unambiguous allegations establishing the meeting of minds or prior concert between the applicant and the main assailants, the applicability of common intention remains debatable and requires full-fledged trial. At this stage, in the opinion of this Court, there is insufficient

material to deny bail solely on the basis of a vague and general allegation of obstruction.

13. Moreover, the applicant is a woman, and is stated to be the sister-in-law of the deceased, and resides in the same household. She is also stated to have no prior criminal antecedents, and there is no material on record to show that she is likely to abscond or tamper with the prosecution witnesses if released on bail. The charge-sheet has been filed and the custodial interrogation of the applicant is not required.

14. The Supreme Court, in a catena of decisions, has held that bail is the rule and jail is the exception, particularly when the trial is likely to take time and the accused does not appear to be a flight risk or a threat to society. The grant of bail is not to be denied merely for the purpose of punishment before conviction.

15. Further, this Court is also mindful of the fact that the applicant is not a hardened criminal, and nothing has been placed on record to show that she may indulge in similar conduct in future. The applicant is in judicial custody since the date of arrest, and no specific material is shown to suggest that she has attempted to influence the witnesses or interfere with the administration of justice.

16. Having regard to the totality of the circumstances, the limited role attributed to the applicant, her status as a woman, absence of criminal antecedents, and the stage of the trial, this Court is of the considered view that a case for grant of regular bail is made out. Suitable conditions can be imposed to ensure that the

applicant cooperates with the trial and does not misuse the liberty granted.

17. Hence, the following order :

- (i) The Bail Application is allowed.
- (ii) The applicant, shall be released on bail in connection with Crime Register No. 670 of 2024 registered with Kurla Police Station for offences punishable under Sections 103(1), 115(2), 189(1)(2), 190, 352 of the BNS, 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 report to the Kurla Police Station, on the first Monday of every three months between 10.00 a.m. and 12.00 noon, until further orders.
 - (c) The applicant shall not leave the territorial jurisdiction of the Trial Court without its prior written permission.
 - (d) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.
 - (e) 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.

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

19. In view of disposal of the Bail Application, the interim application stands disposed of.

(AMIT BORKAR, J.)