

AGK

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

BAIL APPLICATION NO.2556 OF 2025

Jishan Sadique Khan Alias Shaikh ... Applicant
V/s.
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.2966 OF 2025
IN
BAIL APPLICATION NO.2556 OF 2025**

Sajid Abdul Wahab Shaikh ... Applicant
In the matter between
Jishan Sadique Khan Alias Shaikh ... Applicant
V/s.
The State of Maharashtra ... Respondent

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Mr. Aniket Vagal with Ms. Juhi Kadu and Ms. Savvy Kalhekar and Mr. Kunal Pednekar for the applicant.

Mr. Sagar R. Agarkar, APP for the respondent-State.

Mr. Sudip Pasbola, Senior Advocate i/by Mr. Mateen Shaikh for the applicant-intervener in IA.

Mr. Rupchand Shele, API, Shantinagar Police Station, Bhiwandi, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 19, 2025

P.C.:

1. By the present bail application filed under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short), the applicant seeks his release on regular bail in connection with

Crime Register No.950 of 2024 registered with Shanti Nagar Police Station for offences punishable under Sections 109, 120-B, 143, 147, 148, 149, 302 and 307 of the Bhartiya Nyaya Sanhita, 2023 (“BNS” for short).

2. The case of the prosecution, in brief, is that on 28 November 2023 at about 4.30 p.m., one Huzefa Rufel Shaikh allegedly harassed the daughter of Arif Hafiz Khan. In consequence, the First Information Report (FIR) came to be lodged. On 2 April 2024, at about 6.30 p.m., when the complainant was at home along with his brothers Sonu and Asif, he received a call from his friend Mobin Ansari informing him that his uncles were being attacked by some persons. The complainant immediately rushed towards KGN Chowk and, upon reaching there, noticed that his uncles Jubair, Ishtiyag, Noyeb, Shahbaz and Asif were being brutally assaulted by Arif Khan, his brother Abid, one Babulal, Arif’s son Fardeen, his uncle Sadiq, and others namely Shakil Shaikh, Samir Shaikh, Idu Shaikh, Zeeshan Shaikh and Abid’s brother-in-law Saleewala along with 3-4 unknown persons. It is alleged that deadly weapons were used in the assault. Arif was armed with a sword-like weapon, while Asif, Babulal and Fardeen were carrying knife-like weapons, and the remaining accused were armed with sharp weapons and wooden sticks. Further allegation is that certain persons namely Hashim Retiwala, Babulal’s uncle Munaf, Sadiq, Samir and Zeeshan were instigating and exhorting the assailants to kill by shouting “Maro, Maro, Jaan se maar dalo.” When the complainant tried to intervene, he too was attacked. It is alleged that Babulal stabbed the complainant below his left rib with a knife, and Abid

struck him on the jaw with a wooden stick.

3. Learned Advocate appearing on behalf of the applicant submitted that though the FIR states that the incident occurred at 8.30 p.m. on 2 April 2024, the FIR itself came to be lodged only at 3.44 a.m. on the next day. He submitted that in the FIR, the complainant initially attributed assault to the applicant along with several others, but in the later portion of the same paragraph, the complainant specifically described the role of those who assaulted the deceased and injured persons. In that description, the applicant's role is not mentioned. According to the FIR, the applicant is only said to have instigated the co-accused to kill the deceased persons. Learned Advocate pointed out that the three injured witnesses have categorically described the role of each assailant; however, none of them have attributed any act of assault to the present applicant. Even the allegation of instigation is not found in their statements. Although some other witnesses have tried to implicate the applicant, the defence contends that their versions are stereotyped and their very presence at the spot appears doubtful. The applicant has been in custody since 3 April 2024, and it is an admitted position that he does not have any past criminal antecedents. On these grounds, it is urged that the applicant deserves to be released on bail.

4. Per contra, learned APP and learned Senior Advocate appearing for the informant strongly opposed the bail application. They submitted that the FIR as well as the statements of several witnesses clearly establish the presence of the applicant at the spot. The CDR (call detail record) report also corroborates the

prosecution version. The witnesses have specifically implicated the applicant by attributing the role of participation in the assault. It is further submitted that the applicant was a member of the unlawful assembly, and once such membership with a common object of committing murder is established, it is not necessary at this stage for the prosecution to prove that the applicant himself committed any overt act. The law on unlawful assembly under Section 149 BNS makes each member vicariously liable for the acts done in prosecution of the common object. Therefore, considering the gravity of the offence, the manner of assault, and the specific role assigned to the applicant by witnesses, it is submitted that no case for grant of bail is made out and the application deserves rejection.

5. I have considered the rival submissions and perused the FIR, statements of witnesses, medical papers and other material placed on record. The prosecution case, as it appears, is that a large group of persons armed with deadly weapons formed an unlawful assembly and in prosecution of their common object assaulted the complainant and his relatives, resulting in the death of two persons and serious injuries to others.

6. The role of the present applicant needs careful scrutiny. In the FIR, in the first narration, his name is taken along with several others as having participated in the assault. However, in the later part of the same FIR, the complainant has specified the names and individual acts of those who assaulted the deceased and the injured. In that narration, no role of direct assault is attributed to the applicant. It is only alleged that he exhorted other accused persons to kill the deceased.

7. On going through the statements of three injured eye-witnesses, it is seen that they have clearly stated the role of each assailant. None of them have stated that the present applicant assaulted either of the deceased or any of the injured. Even the allegation of exhortation is absent from their version. Some other witnesses have sought to implicate the applicant, but their statements appear to be general in nature without attributing any specific overt act. Prima facie, therefore, the applicant's role appears to be limited and not on par with those who directly inflicted blows with deadly weapons.

8. The applicant has been in custody since 3 April 2024. The investigation is completed and the charge-sheet is already filed. The applicant has no criminal antecedents. The trial is not likely to conclude in near future having regard to the number of accused and witnesses. The principle laid down by the Hon'ble Supreme Court is that pre-trial incarceration should not be prolonged when the accused has been in custody for a considerable period and the trial is likely to take time, unless his release is likely to prejudice fair trial or cause threat to witnesses.

9. At this stage, it cannot be said that the applicant's release on bail would pose such risk, especially when the main allegations of assault and use of deadly weapons are against other accused persons. The applicant can be released on bail by imposing suitable conditions to ensure his presence during trial and to prevent any tampering with prosecution witnesses.

10. In view of the above discussion, I am of the opinion that the applicant has made out a case for grant of bail.

11. 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.950 of 2024 registered with Shanti Nagar Police Station for offences punishable under Sections 109, 120-B, 143, 147, 148, 149, 302, 307 of the BNS, upon furnishing a personal bond of Rs.50,000/- (Rupees Fifty 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 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 Shanti Nagar Police Station once in a month, specifically on the 1st Monday of each month, between 10:00 a.m. and 12:00 noon, until further orders.

(c) The applicant shall not enter the territorial jurisdiction of the concerned Police Station until further orders, except for marking evidence and attending trial.

(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.

(f) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

12. The bail application is allowed and disposed of.

13. In view of this order, the interim application also stands disposed of.

(AMIT BORKAR, J.)