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

BAIL APPLICATION NO.2582 OF 2025

Nachiket Hiranman Gawand ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. P. N. More and N.C. Kamble for the applicant.

Mrs. Mahalakshmi Ganapathy, APP for the State.

Mr. Mrutunjay Hiremath, ACP, Nehrunagar Division
Mumbai, Mr. Pravin Patil, P.I. Chunabhatti Police
Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 25, 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 No. 544 of 2023 registered at Chunabhatti Police Station. The applicant is facing prosecution for serious offences punishable under Sections 302, 307, 120-B, 212, 201 read with Section 34 of the Indian Penal Code, 1860, as well as under Section 3 of the Maharashtra Control of Organized Crime Act, 1999 (for short "MCOC Act").

2. The brief case of the prosecution is that on 24th December 2023, at about 3:10 p.m., one Sumit Yerunkar (since deceased), along with his friends, namely, Madan Patil, Roshan Lokhande,

Aakash Khandagale and the first informant Vinod Vishwakarma, had gone to Shree Photo Studio situated at Azad Galli, Chunabhatti, for the purpose of getting photographs clicked for displaying them on banners and flex boards for his birthday celebration. While they were present there, five accused persons, namely, Babu, Sunil, Naresh, Sagar and Prabhakar, allegedly arrived at the spot and opened indiscriminate fire upon Sumit and his companions. In the said incident, Sumit sustained multiple firearm injuries and succumbed during treatment in the hospital. His friends and some bystanders also sustained injuries in the firing.

3. On the basis of the complaint lodged by the informant Vinod Vishwakarma, FIR came to be registered for the offences punishable under Sections 302, 307, 120-B, 212, 201 read with 34 of IPC and also under Sections 3, 25, 27 of the Arms Act. During the course of investigation, after obtaining requisite prior approval and sanction under law, provisions of the MCOC Act were invoked against the accused. The investigating agency thereafter filed a charge sheet upon completion of investigation.

4. Learned counsel appearing for the applicant submitted that the applicant is not the main assailant and no overt act of firing is attributed to him. According to the prosecution itself, the limited role alleged against the applicant is that he was standing at the end of the galli with a view to prevent public interference and thereby facilitated the firing by the other accused persons. It is urged that the applicant has not been found in possession of any weapon and there is no allegation that he fired any shot. The

prosecution has only alleged that he acted as a guard or lookout. Learned counsel further pointed out that a co-accused, who was assigned the same role and was standing along with the present applicant, has already been released on bail by this Court in Bail Application No. 451 of 2025, decided on 29th July 2025.

5. It is further argued that the applicant has eight prior cases registered against him under the Indian Penal Code and under Gambling Act, and even that case has no connection with any organized crime activity. The learned counsel submits that mere presence of the applicant in the vicinity of the incident cannot be treated as active participation in the offence, particularly when the applicant is a resident of the same locality and his presence there is capable of being explained on that basis.

6. With regard to the telephonic contact with other accused persons, learned counsel submitted that the Call Detail Records relied upon by the prosecution only show some calls exchanged in the three months prior to the incident, but there is no material of any specific overt criminal act. Mere telephonic contact, without any material of active involvement in unlawful activities, cannot by itself satisfy the rigours of Section 2(1)(d) of the MCOC Act which mandates proof of continuing unlawful activity and demonstrable nexus with an organized crime syndicate.

7. It is further brought to the notice of this Court that the applicant has been in custody since 1st January 2024. The charge sheet includes as many as 47 witnesses, and the trial is not likely to commence or conclude in the near future. In these

circumstances, it is urged that prolonged pre-trial incarceration of the applicant, especially when he is not the main perpetrator of the offence, would be unjustified.

8. Per contra, the learned Additional Public Prosecutor has strongly opposed the grant of bail. According to her, the role of the applicant was not a passive or innocent one but was clearly intended to aid the main assailants by blocking the entry of public into the galli, thereby ensuring smooth execution of the murderous attack. The prosecution has also relied upon Call Detail Records showing the applicant's frequent contact not only three months prior but also immediately before the incident with persons having criminal background. This, according to the prosecution, is a clear indicator of a pre-conceived plan and conspiracy.

9. The learned APP further pointed out that the applicant has as many as eight criminal antecedents, though in three of them he is acquitted and three pertain to offences under the Gambling Act. The prosecution asserts that this criminal history reflects the applicant's criminal propensity and involvement with unlawful elements. It is apprehended that if the applicant is released on bail, he may indulge in similar activities or attempt to tamper with the prosecution witnesses. On these grounds, the learned APP prayed that the application for bail deserves to be rejected.

10. I have carefully considered the rival submissions and have perused the record of investigation as also the charge sheet. At the outset, it is not disputed that the applicant is not attributed with any role of firing upon the deceased or the injured witnesses. The

specific case of the prosecution is that he was standing at the end of the galli to prevent entry of outsiders during the incident. Thus, his role is not of a principal assailant but is stated to be of an aider.

11. It is also relevant to note that a co-accused who was assigned the same role, namely of guarding the galli, has already been released on bail by this Court in Bail Application No. 451 of 2025 decided on 29th July 2025. Once parity is established in terms of the role and allegations, the applicant is entitled to claim similar treatment unless there exist distinguishing circumstances against him. No such material distinguishing the applicant from the co-accused has been pointed out by the prosecution.

12. As regards the invocation of provisions of the MCOC Act, it is a settled position that mere telephonic contact or association, without proof of continuing unlawful activity and demonstrable nexus with an organized crime syndicate, would not be sufficient to attract the stringent provisions of the said Act. The charge sheet presently discloses some call detail records but does not prima facie show any specific overt act of the applicant evidencing his participation in organized crime. The question whether the provisions of MCOC are attracted or not would be a matter of trial. At this stage, this Court is only required to assess whether the applicant deserves to be released on bail pending trial.

13. The record further indicates that the applicant has been in custody since 1st January 2024. The charge sheet cites as many as 47 witnesses, and it is apparent that the trial will take considerable time to conclude. Prolonged pre-trial incarceration, especially

when the applicant's role is not of the principal offender, would cause undue hardship and may amount to punitive detention, which is not the object of bail jurisprudence.

14. The contention of the prosecution regarding antecedents also does not persuade this Court to deny bail. Out of eight antecedents, three have resulted in acquittal and three pertain to offences under the Gambling Act. Only two cases under IPC remain, and they have no nexus with organized crime activity. The antecedents therefore cannot by themselves be a ground to deny bail, particularly when the co-accused having a similar background has been granted bail.

15. The apprehension expressed by the prosecution that the applicant may tamper with evidence or repeat similar activities can be taken care of by imposing suitable conditions.

16. Having regard to the overall facts and circumstances of the case, and considering the principle of parity with co-accused, this Court is of the opinion that the applicant deserves to be released on bail.

17. Hence, the following order is passed.

- i) The bail application is allowed;
- ii) The applicant Nachiket Hiranman Gawand is directed to be released on regular bail in connection with Crime No.544 of 2023 registered with Chunabhatti Police Station for offences punishable under Sections 302, 307, 120-B, 212, 201 read with 34 of the Indian Penal Code, 1860 and Section

3 of the Maharashtra Control of Organized Crime Act, 1999, 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 report the Chunabhatti 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.
- c) The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- d) The applicant shall not enter the jurisdiction of Chunabhatti Police Station, except for marking attendance.
- e) The applicant shall not indulge in any criminal activity during the pendency of the trial.
- f) Any breach of these conditions shall result in the prosecution moving for cancellation of bail before the Trial Court.

18. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)