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

BAIL APPLICATION NO.2655 OF 2025

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Amir Alias Faizan Rajjak Sayyed

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Aniket Vagal for the applicant.

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

Mr. Vikas Bhingardive, API, Shantinagar Police Station,
Bhiwandi is present.

CORAM : AMIT BORKAR, J.

DATED : JULY 18, 2025

P.C.:

1. The present bail application is filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with Crime No. 697 of 2021 registered with Shantinagar Police Station, Bhiwandi, District Thane. The applicant is facing allegations for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860.

2. The case of the prosecution, in brief, is that the deceased was the nephew of the first informant. The applicant is stated to be the maternal cousin of the deceased. As per the prosecution story, whenever the deceased used to visit Mumbai from his native place in the State of Uttar Pradesh, he would often spend time in the company of the applicant.

3. According to the first informant, on 16th October 2021, the deceased went missing in the afternoon hours. A missing person complaint was accordingly lodged. Subsequently, in the early hours of 18th October 2021, around 04:00 a.m., the police informed the first informant that a dead body had been found and was kept in the mortuary at Indira Gandhi Hospital, Bhiwandi. Upon verification, the first informant identified the said dead body to be that of the deceased.
4. The first informant, having suspected the applicant due to his alleged addiction habits and close association with the deceased, raised an accusation that the applicant might be involved in the murder. Based on such suspicion and the material collected during investigation, the applicant came to be arrested.
5. During the course of investigation, the applicant is alleged to have made a statement under Section 27 of the Indian Evidence Act, leading to discovery and recovery of the mobile phone belonging to the deceased.
6. Learned advocate for the applicant has placed reliance on the order dated 22nd April 2025 passed by the Co-ordinate Bench of this Court in Criminal Bail Application No. 1380 of 2025, wherein co-accused Shafique Ansari came to be released on bail. It is submitted that the prosecution case is entirely based on circumstantial evidence and that the role attributed to the present applicant is similar to that of the released co-accused. It is, therefore, urged that the applicant be granted the benefit of parity and be released on bail.

7. On the other hand, the learned APP has opposed the bail application by submitting that the Sessions Court, after perusal of the case papers, has specifically recorded a finding that the role of the present applicant is distinct and graver than that of the released co-accused. It is contended that the recovery of the mobile handset of the deceased at the instance of the applicant is a strong circumstance pointing towards his involvement, and therefore, he is not entitled to be released on the ground of parity.

8. I have considered the rival submissions advanced by the learned Advocate for the applicant and the learned APP for the State. I have also carefully perused the material placed on record, including the FIR, statement of the first informant, recovery panchanama, and the order relied upon by the applicant passed by the Co-ordinate Bench.

9. It is not in dispute that the prosecution case rests entirely on circumstantial evidence. There is no direct eye-witness account of the incident. The main circumstance relied upon by the prosecution is the alleged recovery of the mobile handset of the deceased at the instance of the applicant, and the fact that the deceased and the applicant were last seen together.

10. More importantly, the Co-ordinate Bench of this Court has already granted bail to co-accused Shafique Ansari in Criminal Bail Application No. 1380 of 2025. From the case papers, it is seen that the role attributed to the said co-accused and the present applicant is broadly similar in nature. Though the Sessions Court has recorded that the role of the applicant is different, the distinction

appears to be primarily based on the discovery of the mobile phone. In my considered opinion, this difference alone is not sufficient to deny the benefit of parity at the stage of bail.

11. The applicant is in custody since October 2021 and more than two years have passed. The trial is yet to commence. In such circumstances, continued incarceration would amount to pre-trial punishment, which is impermissible in law. The applicant is a permanent resident of Bhiwandi and is not shown to have criminal antecedents. Appropriate conditions can be imposed to secure his presence during the trial.

12. Hence, in the totality of the facts and circumstances of the case, this Court is of the opinion that the applicant deserves to be released on bail.

13. Hence, the following order is passed:

- i) Application stands allowed.
- ii) The applicant Amir Alias Faizan Rajjak Sayyed is directed to be released on regular bail in connection with Crime No.697 of 2021 registered with Shantinagar Police Station, Bhiwandi, Thane, for offences punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, 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 mark his presence at Shantinagar

Police Station on the first Monday of every alternate month in between 10.00 a.m. to 12.00 noon for the period of two years or till conclusion of the trial, whichever is earlier.

b) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.

c) On being released on bail, the applicant shall furnish his contact number and residential address to the investigating officer and shall keep him updated, in case there is any change.

d) The applicant shall regularly attend the proceedings before the jurisdictional Court.

e) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

4. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)