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

BAIL APPLICATION NO.2709 OF 2025

Ashokkumar Brijeshkumar Gupta	... Applicant
V/s.	
The State of Maharashtra	... Respondent

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Mr. Ravi Dwivedi with Mr. Sainath S. Baji, Mr. Satish Shukla and Mr. Aditya Gole for the applicant.

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

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2025

P.C.:

1. By the present bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), the applicant seeks his release on regular bail in connection with Crime Register No. 365 of 2017, registered with Shivaji Nagar Police Station, Mumbai, for offences punishable under Sections 302, 392, 449, 176, 411 and 34 of the Indian Penal Code, 1860 ("IPC" for short).

2. As per the prosecution case, the complainant is a resident of H/70, Dhanda Ration Shop, Plot No. 31, SE Line, Room Nos. 3 and 4, Road No. 8, Bainganwadi, Govandi, Mumbai, since the year 1982, and he is running a rationing shop on the ground floor of the said premises. It is alleged that on 22nd September 2017, the complainant's son Deepak had gone to their native village Vijayapura, District Jaunpur, Uttar Pradesh, to attend a religious

function. On the following day, i.e., 23rd September 2017, the complainant opened his shop at about 9.00 a.m. and started working with the help of his employees – Rajesh, who had joined only a day before, and Bablu, who was an old servant. At about 12.30 p.m., both Rajesh and Bablu went out for lunch, while the complainant and his wife closed the shop, had lunch, and rested.

3. Later, at about 4.00 p.m., the complainant went to his other ration shop at Lemon Bagh, accompanied by the new servant Rajesh. At around 5.45 p.m., he received a telephone call from Bablu, who informed him that when he went to the Bainganwadi shop, his wife did not respond to the knocking on the shutter. On opening the shutter himself, Bablu found her lying in a pool of blood, showing no movement.

4. On rushing to the spot, the complainant found his wife lying in a pool of blood with injuries on her neck, forehead, and head, apparently caused by a sharp-edged weapon. On going to the bedroom situated on the first floor, the complainant noticed that the wooden cupboards were lying open, the drawers and suitcases were in disarray, and articles were scattered all around. When the complainant's daughter and son-in-law arrived, they also noticed that the jewellery kept in the cupboards had been stolen. By that time, the police had reached the spot. The injured wife of the complainant was taken to hospital but was declared dead.

5. On checking the valuables, the complainant's family members noticed that cash and ornaments amounting to about Rs.3,41,000/- were missing. The details of the stolen property are

as follows:

- a) Cash Rs. 1,76,000/- in Indian currency notes of different denominations;
- b) Gold necklace weighing 20 grams worth Rs. 44,000/-;
- c) Gold ear-rings weighing 5 grams worth Rs. 33,000/-;
- d) Gold chain weighing 20 grams worth Rs. 44,000/-;
- e) Four gold rings weighing 2 grams worth Rs. 44,000/-.

6. It is further the case of the prosecution that one Ashok, who had been working at the Bainganwadi ration shop for about a year, was asked to discontinue by the complainant's wife about a month earlier, as he was not doing his work properly. This, according to the complainant, had created animosity in the mind of Ashok, who thereafter bore a grudge against the complainant's wife. Sometimes, Ashok was seen working in the complainant's other shop at Lemon Bagh, and presently, he is said to be employed with the complainant's acquaintance Rakesh Gupta. Based on these facts and suspicions, the complainant lodged the FIR.

7. Learned counsel appearing for the applicant submits that the applicant was arrested on 25th September 2017 and is in custody since then. The prosecution has cited 34 witnesses in the charge sheet, but till date, only 15 witnesses have been examined. Learned counsel has further invited my attention to the order passed by a coordinate Bench of this Court in Bail Application No. 1845 of 2025 dated 5th May 2025, whereby the co-accused, having a similar role, was granted bail on the ground of prolonged incarceration. On the strength of the said order, it is submitted that the applicant also deserves to be released on bail on the ground that he has undergone long incarceration without conclusion of

trial.

8. On the other hand, learned APP strongly opposed the application. He submits that the applicant is accused of a heinous crime involving the murder of a woman in her own house, coupled with robbery. He contends that the mere fact of long incarceration cannot by itself be a ground for granting bail in such a serious case. According to him, the Court has to take into account not only the period of custody but also the gravity of the offence, its impact on the society, and the role attributed to the accused. Considering the seriousness of allegations and the material collected during investigation, it is submitted that the applicant does not deserve to be enlarged on bail.

9. I have considered the rival submissions and perused the material on record. It is true that the allegations against the applicant are serious in nature, involving offences punishable under Sections 302, 392 and other allied provisions of the IPC. The incident has resulted in the death of the complainant's wife and also in loss of valuable property. Normally, in such cases of grave offences, the Court is expected to exercise greater caution while considering a plea for bail.

10. At the same time, it cannot be ignored that the applicant has been in custody since 25th September 2017, i.e., for almost eight years. The trial is still pending and out of 34 prosecution witnesses, only 15 have been examined so far. There is no certainty as to when the trial will be concluded. The right to a speedy trial is an integral part of Article 21 of the Constitution of India.

Prolonged incarceration without conclusion of trial amounts to punishment before conviction, which is not permissible in law.

11. The coordinate Bench of this Court has already granted bail to the co-accused in Bail Application No. 1845 of 2025 by order dated 5th May 2025, on the ground of long incarceration and delay in trial. The role attributed to the present applicant is similar to that of the said co-accused. Denying bail to the applicant while extending the same benefit to the co-accused would amount to discriminatory treatment.

12. The apprehension of the prosecution that the applicant may tamper with witnesses or obstruct the trial can be safeguarded by imposing appropriate conditions. The learned APP has not pointed out any specific incident during the last eight years of custody to show that the applicant has tried to misuse liberty or influence the course of trial.

13. Thus, balancing the seriousness of the allegations on one hand and the constitutional mandate of protecting personal liberty and right to speedy trial on the other, I am of the considered view that this is a fit case where the applicant deserves to be released on bail. The grant of bail at this stage would not amount to an expression of opinion on the merits of the matter, which shall be decided independently at the stage of trial.

14. Hence, following order is passed:

- a) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

- b) Before his actual release from jail, applicant shall furnish his address where he proposes to reside after his release from jail to the concerned police station and also to the trial Court;
- c) After his release from jail, applicant shall report to the investigating officer as and when called for;
- d) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and/or non Court working day, the applicant shall mark presence on the next working day.
- e) Applicant shall cooperate with the conduct of trial and attend the trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if he does so, it will entitle the prosecution to apply for cancellation of this order;
- f) Applicant shall not leave the State of Maharashtra without prior permission of the trial Court;
- g) Applicant shall not influence any of the witnesses or tamper with evidence in any manner; and
- h) In case of any infraction of the above conditions and/or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C., i.e., for cancellation of bail.

15. It is clarified that the observations made in this order are limited for the purpose of granting bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the prima facie observations made herein above in this order.

16. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)