

Shabnoor

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

BAIL APPLICATION NO. 2811 OF 2025

Jassi Vijay Tiwari

... Applicant

V/s.

State of Maharashtra

... Respondent

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Mr. Murtuza Najmi a/w Mr. Afsar Ansari, Suraj Pandey,
Ashish Pathak, Karishma Ch. And K. Biswas i/b Mr.
Shambhu M. Jha for the applicant.

Ms. Mahalakshmi Ganapathy, APP for the State –
respondent No.1.

Mr. Raeesuddin Khan, for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 13, 2025

P.C.:

1. The present application for bail has been filed by the applicant under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “BNSS”). By this application, she seeks her release in connection with Crime Register No. 32 of 2025 registered with Bhiwandi Taluka Police Station. The said crime is registered for offences punishable under Sections 103(10n), 61(20), 238(c), and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short, “BNS”).

2. The case of the prosecution, as can be gathered from the First Information Report (FIR), is as follows: The complainant

resides at the given address along with his family members. His mother, Mehful Nisa, resides at their native village, Haiderpur, Uttar Pradesh. The complainant and his younger brother, Mohammad Akram Qureshi, are employed as drivers of a car belonging to their sister's husband, Mohammad Shakil Minhaz Khan. Another brother, Firoz, is employed in a private vehicle service centre at Lokhandwala, Andheri, where he works in vehicle cleaning.

3. On 17 January 2025, the complainant and his brother Akram went to work using an Ola car. Between 2:00 p.m. and 2:30 p.m., the complainant tried to contact Akram on his mobile phone. However, Akram did not receive the call and his phone appeared switched off. About three to five minutes later, the complainant received a call from Asif, the son of his maternal uncle. It is alleged that calls made to Akram's phone were being diverted to Asif's number.

4. It is further the case of the prosecution that Akram had informed the complainant earlier that he was going to Thane, but thereafter, there was no further contact with him. The complainant made inquiries with his friends to trace Akram's whereabouts, but without success. On 18 January 2025, at around 10:00 p.m., the complainant's brother-in-law received a phone call from Bhiwandi Taluka Police Station. The police informed him that a Wagon R car, driven by Akram, had been found within the jurisdiction of Village Pogaon, near Pipeline Road.

5. Acting on this information, the complainant along with Shakil went to the spot. Upon reaching there, they saw the Wagon R car owned by Shakil. The police also showed them the dead body of a male person found at the scene. The complainant and Shakil identified the body as that of Akram. They noticed several injuries on Akram's person. Believing that Akram had been murdered by unknown persons, the complainant lodged a report. On the basis of this report, the present crime was registered against unknown persons.

6. The learned advocate appearing for the applicant has submitted that the entire case of the prosecution is founded solely on circumstantial evidence. The two main circumstances relied upon by the prosecution are: (i) that the applicant was allegedly the last person seen in the company of the deceased, and (ii) certain chat messages exchanged between the applicant and her friends, wherein the applicant is stated to have cautioned them that if her parents made any inquiry about her, they should inform them that she was with a friend at Shiv Mandir on 17 January 2025. It is argued that such material, even if accepted at face value, does not by itself establish the guilt of the applicant unless supported by other cogent and reliable circumstances forming a complete chain leading to the sole inference of guilt.

7. The learned advocate has further drawn attention to the statement of a prosecution witness who allegedly saw the applicant along with the co-accused near the spot of the incident, with an Ola car present at that place. It is pointed out that this statement was not recorded promptly, but only after one month of

the incident, and that too, almost a year after the occurrence. There is no explanation from the Investigating Agency as to how they came into contact with this witness after such a long gap. Moreover, the said witness claims to have been travelling on a bicycle at the time, which, according to the defence, makes it highly doubtful that he could have correctly identified the applicant from such circumstances.

8. It is further submitted that no direct motive is alleged against the applicant. The only motive put forth by the prosecution is in relation to a land dispute between the co-accused Kaif, the deceased, and the deceased's brother, which allegedly occurred three years prior to the present incident. Such a motive, it is contended, cannot be stretched to implicate the applicant in the present offence.

9. Learned counsel for the applicant has also relied upon the Call Detail Record (CDR) location data. It is argued that while the prosecution claims that the applicant was seen near the incident spot at around 2:30 p.m., the CDR records indicate the relevant time as 1:57 p.m., and further show that at that time there was a distance of more than one kilometre between the applicant and the deceased. This, it is urged, clearly creates doubt about the correctness of the 'last seen' allegation. In these circumstances, the defence submits that the chain of events sought to be established by the prosecution remains incomplete, and there is no material to justify the continued pre-trial detention of the applicant. It is, therefore, prayed that she be enlarged on regular bail.

10. On the other hand, the learned Assistant Public Prosecutor (APP) and the advocate appointed to represent the victim have strongly opposed the bail application. It is contended that the applicant was in active communication with her friends and that the contents of the chat messages reveal an attempt to suppress the truth from her parents. According to them, the applicant had specifically instructed her friends that if her parents made any inquiry, they should say she was with them on 17 January 2025.

11. It is further submitted that a witness has categorically stated that he saw the applicant along with the co-accused near the place of occurrence on the date of the incident. The prosecution also alleges that the applicant had met the co-accused Kaif on the same date, and that she was in a relationship with him. It is argued that Kaif had a motive arising from the earlier land dispute with the deceased and his brother, and that the applicant had accompanied the deceased to the spot at the instance of Kaif. According to the prosecution, these circumstances, taken together, establish the 'last seen' theory against the applicant and also show her active participation in facilitating the offence. It is, therefore, prayed that the application for bail be rejected.

12. I have considered the rival submissions and perused the material placed on record. The prosecution case is admittedly based solely on circumstantial evidence. It is a settled principle of criminal jurisprudence that in cases resting on circumstantial evidence, each link in the chain of circumstances must be firmly established, and the chain must be so complete as to lead to the only conclusion of the guilt of the accused, ruling out every

hypothesis consistent with innocence. At the stage of considering a bail application, the Court is not to undertake a meticulous examination of the evidence but to assess whether the material placed discloses a prima facie case justifying continued detention pending trial.

13. In the present case, the primary circumstance relied upon by the prosecution is the “last seen” theory. The only supporting material for this is the statement of a witness who claims to have seen the applicant with the co-accused near the incident spot. However, this statement was admittedly recorded after delay of one month and, as per the record, almost a year after the occurrence. Such delay in recording the statement of a crucial witness casts doubt on its reliability, particularly when there is no explanation from the investigating agency as to how this witness came to their notice.

14. Further, the said witness claims to have been travelling on a bicycle at the relevant time, which, in the facts of this case, makes the possibility of accurate identification doubtful. This is compounded by the CDR location data relied upon by the defence, which shows that at the relevant time of 1:57 p.m., the applicant was at a place more than one kilometre away from the deceased, contrary to the witness’s assertion of seeing them together at about 2:30 p.m. This discrepancy weakens the prosecution’s “last seen” circumstance at this stage.

15. As far as motive is concerned, no independent motive is attributed to the applicant. The only motive suggested relates to a

land dispute involving the co-accused Kaif, the deceased, and the deceased's brother, said to have occurred three years before the present incident. Such a remote and indirect motive, even if taken at face value, cannot by itself be a strong circumstance to deny bail, especially when the alleged dispute did not directly involve the applicant.

16. The chat messages relied upon by the prosecution, wherein the applicant cautioned her friends to give a particular version to her parents, may at best indicate an attempt to avoid parental inquiry. Whether such messages have any direct nexus with the alleged offence or constitute incriminating conduct is a matter for trial and cannot be conclusively determined at this stage.

17. The applicant is a woman and has been in custody since her arrest in connection with this case. The trial is yet to commence, and given the nature of the circumstantial evidence presently available, it is not shown that her continued detention is necessary for the purposes of investigation, which appears to be complete. The apprehension of tampering with evidence or influencing witnesses can be addressed by imposing appropriate conditions.

18. In view of the above discussion and legal position, the following order is passed:

(i) The Bail Application is allowed.

(ii) The applicant shall be released on cash bail of ₹50,000/- (Rupees Fifty Thousand only) in connection with Crime Register No. 32 of 2025 registered with Bhiwandi Taluka Police Station for offences punishable under Sections

103(10n, 61(20, 238(c), and 3(5) of BNS.

(iii) Within a period of eight weeks from the date of her release, the applicant shall furnish a Personal Bond of of ₹50,000/- (Rupees Fifty 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 attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(c) The applicant shall report to the Bhiwandi Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.

(d) The applicant shall not leave the territorial jurisdiction of the state of Maharashtra without prior written permission of the trial court.

(e) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(f) The applicant shall, at the time of furnishing surety, provide her 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.

(g) If any of the above conditions are breached, it shall be open to the prosecution to seek cancellation of bail.

19. The Bail Application is accordingly disposed of in above terms.

(AMIT BORKAR, J.)