

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

Criminal Bail Application No. 2957 of 2025

Kamlesh Lukas Pathare

Age about 25 years, Occ.: Service,

R/at Jay Bheem Nagar, Dapodi,

Dist. Pune.

(At present detained in Kalamba

Central Prison, Kolhapur.)

... Applicant

Versus

The State of Maharashtra

Through Wakad Police Station, Pune,

(C.R. No.554/2024)

Notice to be served on the A.P.P

High Court, Mumbai.

...Respondent

Ms Shubhangi Parulekar a/w Ms Varsha Bhosale, for the Applicant.

Mr S V Walve, APP, for the Respondent / State.

ACP Sunil Kurade, IO a/w API PG Gajjewar, Wakad Police Station, Pune.

Coram: R.N. Laddha, J.

Date: 2 December 2025

P.C.:

By this application, the applicant seeks bail in connection with CR No.554 of 2024, registered at Wakad Police Station, Pune, for the offences punishable under Sections 302, 341, 143, 145, 147,148, 149 and 120-B of the Indian Penal Code;

Sections 4, 25 and 27 of the Arms Act, 1959 and Sections 37(1), 37(3), 135 of the Maharashtra Police Act, 1951, as well as Sections 3 and 7 of the Criminal Law Amendment Act.

2. It is the case of the prosecution that on 01 May 2024, at approximately 18:30 hours, the informant, Tejas Hanskar, along with Rehan Shaikh and Harshad Kate, was intercepted on the Aundh–Ravet Road near Park Street Society by accused persons Hritik Chavan, Prem More, Deepak Kokate, and four unidentified associates. It is alleged that the accused, acting in furtherance of their common intention, wrongfully restrained the informant and his companions and forcibly brought their motorcycle to a halt. Thereafter, accused Hritik Chavan inflicted a stab injury to the neck of Rehan Shaikh, while accused Deepak Kokate assaulted him with a sickle, resulting in fatal injuries. During the course of the investigation, the Memorandum statements of co-accused Omkar Shelke (Accused No.1) and Hritik Chavan were recorded, in which they purportedly implicated the present applicant in the commission of the offence.

3. The learned Counsel appearing on behalf of the applicant has vehemently urged that the applicant is innocent and has been falsely implicated in the present matter. It is submitted that the applicant is not named in the First Information Report

(FIR), and the purported eyewitnesses have not attributed any overt act to the applicant, nor have they stated that the applicant was present at the scene of the offence or participated in its commission.

4. It is further contended that the statements of the alleged eyewitnesses were recorded belatedly, only after the arrest of certain co-accused persons. It is submitted that no Test Identification Parade (TIP) has been conducted to establish the identity of the applicant in connection with the alleged incident. Moreover, the prosecution has not attributed any specific motive to the applicant for his alleged involvement in the offence.

5. It is also submitted that the allegation that the applicant is a member of a criminal syndicate or gang, as contemplated under the provisions of the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), is wholly unsubstantiated and bereft of any cogent, independent, or corroborative material. The applicant has no antecedents and has never been previously involved in any criminal activity. The charge sheet does not disclose any prior association of the applicant with the alleged gang leader or any participation in organised criminal operations. There is a conspicuous absence of material to suggest any prior enmity, motive, or premeditated intent on the

part of the applicant. In the absence of such foundational material, the sweeping allegation of ‘gang affiliation’ remains a bald assertion, lacking evidentiary support and therefore insufficient to sustain the invocation of stringent penal provisions.

6. Furthermore, it is contended that there is no material on record to indicate that the applicant was a conspirator or an active participant in the alleged criminal conspiracy. The proposal for the invocation of MCOCA is conspicuously silent with respect to any specific role or involvement of the applicant in the commission of the offence. It is also pertinent to note that no incriminating material has been recovered from the applicant. Significantly, a co-accused, who is alleged to have played a more pivotal role in the conspiracy, has already been enlarged on bail. The applicant, who stands on a comparatively better footing, continues to remain incarcerated. The applicant has been languishing in jail since 29 July 2024, and to date, charges have not been framed. The prosecution has proposed to examine as many as ninety witnesses, indicating that the trial is likely to be protracted and prolonged. The continued incarceration of the applicant, in such circumstances, would amount to pre-trial punishment.

7. It is further submitted that the sole basis for implicating

the applicant appears to be the memorandum statement of a co-accused recorded under Section 27 of the Indian Evidence Act, which, in the absence of recovery or corroboration, is inadmissible in evidence against the applicant. The Call Detail Records (CDRs) do not reflect any telephonic communication between the applicant and the co-accused, either prior to or on the date of the incident. Additionally, the applicant is not visible in the video footage recovered from the mobile phone of the co-accused, which allegedly captures the scene of the offence.

8. On the other hand, the learned Additional Public Prosecutor appearing on behalf of the respondent/State has vehemently opposed the present application for the grant of bail. It is contended that the applicant is a participant in a criminal syndicate purportedly headed by accused No.7, and is therefore involved in the larger conspiracy underlying the offence in question. However, the learned APP, in all fairness, concedes that apart from the confessional statement of a co-accused, wherein the present applicant is named as a participant in the commission of the alleged offence, there exists no other substantive material on record to directly implicate the applicant. It is further submitted that the said co-accused, against whom specific allegations of conspiracy have been levelled, has already been granted bail.

9. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the material placed on record.

10. The prosecution's case, in brief, is that on 1 May 2024, the deceased Rehan Shaikh was assaulted with sharp weapons by co-accused Hritik Chavan and Deepak Kokate. The applicant is not named in the FIR dated 01 May 2024, which sets out the foundational narrative of the alleged offence. The FIR attributes specific acts of violence to certain named accused persons, but does not mention the present applicant, nor does it allege his presence at the scene of the offence. The purported eyewitnesses have not attributed any overt act to the applicant. Their statements, which were recorded belatedly after the arrest of certain co-accused, do not disclose the presence or participation of the applicant in the commission of the offence.

11. Furthermore, no Test Identification Parade (TIP) has been conducted to establish the identity of the applicant in connection with the incident. In the absence of such identification, and in light of the fact that the applicant is not visible in the video footage allegedly capturing the incident, the evidentiary basis for his involvement remains tenuous. It further appears from the record that the only material

implicating the applicant is the memorandum statement of a co-accused recorded under Section 27 of the Indian Evidence Act which is not admissible in evidence. Moreover, no recovery or discovery has been effected pursuant to such statement, rendering it further inadmissible against the applicant. It is well settled that a confessional or inculpatory statement of a co-accused, in the absence of corroboration, cannot form the sole basis for denial of bail.

12. Additionally, the Call Detail Records (CDRs) do not indicate any telephonic communication between the applicant and the co-accused, either prior to or on the date of the incident. This further weakens the prosecution's claim of the applicant's involvement in a premeditated conspiracy. The allegation that the applicant is a member of a criminal syndicate, as contemplated under the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), is not supported by any cogent, independent, or corroborative material. The charge sheet does not disclose any prior association of the applicant with the alleged gang leader or any participation in organised criminal activity. The invocation of MCOCA, in the absence of foundational facts, appears *prima facie* unsustainable.

13. The applicant has no criminal antecedents and has never been previously involved in any offence. No incriminating

material or contraband has been recovered from him. The absence of motive, prior enmity, or any specific role in the alleged conspiracy further militates against the theory of his involvement. It is also relevant to note that a co-accused, who is alleged to have played a more central role in the conspiracy, has already been enlarged on bail. The applicant, who stands on a comparatively better footing, cannot be subjected to continued incarceration on a differential footing.

14. The applicant has been languishing in jail since 29 July 2024. Charges have not yet been framed, and the prosecution proposes to examine as many as ninety witnesses. The likelihood of an early conclusion of the trial appears remote. The learned Additional Public Prosecutor, while opposing the application, has fairly conceded that apart from the confessional statement of a co-accused, there exists no substantive material on record to directly implicate the applicant. This concession further fortifies the applicant's case for the grant of bail.

15. In view of the foregoing, and considering the settled principles governing the grant of bail, this Court is of the opinion that the applicant has made out a case for the grant of bail. Appropriate conditions can be imposed to ensure his presence during the trial. Hence, the following order.

Order

- (i) The applicant shall be released on bail in connection with CR No.554 of 2024, registered at Wakad Police Station, Pune, upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.
- (ii) The applicant, himself or through any other person, shall not tamper with the evidence or influence witnesses.
- (iii) The applicant shall regularly attend the trial proceedings before the jurisdictional Court for the expeditious disposal of the case.

16. The application stands disposed of accordingly.

17. It is clarified that these *prima facie* observations are confined to determining the entitlement to bail.

[R.N. Laddha, J.]