

AGK

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

BAIL APPLICATION NO.3068 OF 2025

Mohammad Nisar Raza

Lal Mohammad

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr. Abdul Raheem Bukhari for the applicant.

Mrs. Megha S. Bajoria, APP for the respondent-State.

Mr. Malik, API, Crime Branch, Thane, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 19, 2025

P.C.:

1. By the present bail application filed under Section 439 of the Code of Criminal Procedure, 1973 (“Cr.PC.” for short) [corresponding to Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (“BNSS” for short)], the applicant seeks his release on regular bail in connection with Crime Register No. 385 of 2020 registered at Bhiwandi City Police Station. The offences alleged against him are punishable under Sections 302, 201 read with Section 34 of the Indian Penal Code, 1860 (“IPC” for short).

2. As per the prosecution case, the deceased, one Shoyab Rashid Shaikh, was the minor son of the first informant. It is alleged that a juvenile in conflict with law, namely Gulab @ Gulam, kidnapped the deceased and thereafter committed his

murder. The prosecution story further reveals that after kidnapping, the deceased boy was taken to a grocery shop at Nehru Nagar, Bhiwandi, where he was murdered. It is alleged that the dead body of the deceased was initially buried in one gala (room/space), and after a period of 7 to 8 months, the skeletal remains of the deceased were removed and disposed of in debris so as to obliterate evidence. The prosecution asserts that the present applicant, along with the said juvenile, committed the offence of murder and further attempted to destroy material evidence, acting in furtherance of their common intention.

3. Learned counsel appearing for the applicant submits that the main role of committing murder is attributed to the juvenile offender, and the allegation against the applicant is confined to extending assistance in the disposal of the dead body. He contends that there is no substantive material linking the applicant with the actual commission of murder. He points out that the only circumstance pressed against the applicant is the disclosure statement of the co-accused recorded under Section 27 of the Indian Evidence Act, 1872. It is submitted that such disclosure statement is inadmissible in evidence except to the limited extent of discovery of material object or place of concealment, and, therefore, cannot be relied upon as substantive proof of guilt. The learned counsel further submits that the applicant has already been arrested on 19th April 2025 and has undergone substantial incarceration. Since investigation is stated to be completed, his further pre-trial detention is not warranted. On these grounds, he prays for grant of regular bail.

4. On the other hand, the learned APP has vehemently opposed the prayer for bail. He has invited attention to the statement of a prosecution witness, which, according to him, clearly shows that the applicant had knowledge of the offence. It is further urged that the disclosure statement under Section 27 of the Evidence Act implicates the applicant in the crime, and, therefore, his release on bail at this stage would not be in the interest of justice. The prosecution, therefore, prays for rejection of the bail application.

5. I have given my anxious consideration to the rival submissions. The offence alleged is indeed grave, punishable with death or imprisonment for life. However, the Court is required to examine the specific role attributed to the applicant and the nature of material available against him.

6. In the present case, the prosecution story primarily revolves around the involvement of the juvenile offender, who is alleged to have kidnapped and committed the murder of the deceased. As far as the applicant is concerned, the allegations are confined to assisting in disposal of the dead body after the commission of offence.

7. The only material sought to be pressed into service against the applicant is the disclosure statement of the co-accused under Section 27 of the Indian Evidence Act. It is trite law that a statement under Section 27 is admissible only to the extent of discovery of fact and cannot be treated as substantive evidence of participation in the crime. Apart from this, there appears to be no independent evidence directly linking the applicant with the act of

murder.

8. The applicant is in custody since 19th April 2025. Investigation has been completed and charge-sheet is filed. Thus, further custodial interrogation of the applicant is not necessary. Prolonged pre-trial detention, particularly where the trial is not likely to commence or conclude in the immediate future, would not be justified in the facts of the present case.

9. Having regard to the totality of circumstances, in my considered opinion, a case is made out for granting bail to the applicant. The apprehensions of the prosecution can be adequately safeguarded by imposing suitable conditions.

10. Hence, following order is passed:

- i) The bail application is allowed;
- ii) The applicant is directed to be released on regular bail in connection with Crime Register No.385 of 2020 registered with Bhiwandi City Police Station for offences punishable under Sections 302, 201 read with 34 of the Indian Penal Code, 1860 ("IPC" for short), upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five 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 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 report to the Bhiwandi City Police Station once in three months, specifically on the 1st Monday, between 10:00 a.m. and 12:00 noon, until further orders.

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

(d) The applicant shall, at the time of furnishing surety, provide his 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.

(e) In case of any breach of the conditions mentioned above, the prosecution shall be at liberty to move for cancellation of bail.

11. The bail application is allowed and disposed of.

(AMIT BORKAR, J.)