

AGK

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

BAIL APPLICATION NO.3409 OF 2025

Mudassir Khurshid Shaikh ... Applicant

V/s.

The State of Maharashtra ... Respondent

Ms. Vilasini Balasubramanian i/by Mr. Wasif
Mohammad Fuzail Akil for the applicant.

Mrs. Mahalakshmi Ganapathy, APP for the respondent-
State.

Mr. Lambhate, API, Bhivandi Taluka Police Station, is
present.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 4, 2025

P.C.:

1. By the present bail application filed under 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. 293 of 2025 registered at Bhiwandi Police Station for the alleged offences punishable under Sections 123, 275, and 287 of the Bhartiya Nyaya Sanhita, 2023 ("BNS" for short), along with Sections 4A and 21A of the Cigarettes and Other Tobacco Products Act, 2003 ("COTPA Act" for short), and Section 33(w) of the Maharashtra Police Act.

2. The case of the prosecution, in brief, is that on 29th July 2025 at about 12.15 a.m., the patrolling police received a tip-off

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from the concerned Police Officer that illegal hookah activities were being carried out at Dastarkhan Restaurant situated on Bhiwandi–Vadpe Road. Acting on this information, a raid was conducted at about 1.00 a.m. in the said restaurant. During the raid, the police found that several persons were smoking hookah and a number of hookah pots were kept ready for use. On seeing the police party, the customers fled from the restaurant. The police seized the hookah pots along with the allied articles. On inquiry with the present applicant regarding permission to allow such activities in the restaurant, it was revealed that there was no such permission taken from the competent authority. The applicant also expressed ignorance about the whereabouts of the owner, namely accused No.1, Fukhran Gauskhan. Subsequently, the complainant noted that the applicant was working as the manager in the said establishment and, therefore, was responsible for serving prohibited substances to the customers.

3. The learned Advocate appearing for the applicant submits that the applicant is in fact a student, who works only as a part-time waiter at the restaurant to support his studies. It is urged that except for Section 123 of the BNS, all the other offences registered are bailable. Drawing attention to the language of Section 123 of the BNS, it is contended that the offence under this section requires a clear act of selling or supplying prohibited or intoxicating substances. The only role attributed to the applicant in the FIR is that he was serving items to the customers, but he is neither the owner nor the person in charge of the establishment. It is further argued that the prosecution has primarily relied upon the

statement made by the applicant before the police, which by itself cannot be treated as admissible evidence. Even in the FIR, the allegation is limited to the applicant being a “manager,” and there is no concrete material to show that he was directly indulging in sale of prohibited or intoxicating substances. The customers were voluntarily consuming hookah on their own, and the FIR itself states that what was found was scented tobacco, and not any stupefying or narcotic material. It is further pointed out that the applicant is only 21 years of age, has no criminal antecedents, and continuation of his custody would cause grave prejudice to his education and career. On these grounds, the applicant seeks his release on bail.

4. On the other hand, the learned APP has vehemently opposed the application. She submits that the offence alleged against the applicant is of a serious nature as the applicant was present at the spot and was managing the affairs of the restaurant where hookah was being served illegally. She submits that administering and supplying hookah in any form is prohibited under the law and the Notifications issued by the competent authority, and, therefore, the ingredients of Section 123 of the BNS are clearly attracted. The seized material has already been forwarded for chemical analysis, and whether the substance contained therein is intoxicating, stupefying, or otherwise injurious to health is a matter which will be determined during the trial. Considering the seriousness of the offence and the responsibility attributed to the applicant as manager, she contends that this is not a fit case for grant of bail.

5. I have carefully considered the rival submissions advanced on behalf of the applicant and the prosecution, and have perused the material available on record.

6. At the outset, it is well settled that the power to grant bail under Section 483 of BNSS, 2023, has to be exercised on sound principles keeping in mind the fundamental right to personal liberty guaranteed under Article 21 of the Constitution of India. It is equally true that liberty is not absolute and has to be balanced against the interests of society. However, at the stage of considering a bail application, the Court is not expected to hold a detailed appreciation of the evidence, but only to see whether there are reasonable grounds to believe that the applicant has committed the alleged offence, the nature of the allegations, severity of punishment, role attributed to the applicant, possibility of tampering with evidence, and likelihood of the applicant fleeing from justice.

7. In the present case, the FIR indicates that the raid was carried out in the early hours of 29th July 2025, and during the raid, certain hookah pots and allied articles were seized. There is no allegation in the FIR that the applicant was found in possession of any prohibited substance personally. The case of the prosecution is that the applicant was working as a manager and was therefore responsible for serving hookah to the customers.

8. It is not in dispute that the applicant is not the owner of the establishment. The prosecution itself has named accused No.1, the owner of the restaurant, as the main person responsible for

running the business. The role of the applicant is limited to that of an employee working in the establishment. The prosecution relies on the applicant's own statement recorded by the police to connect him to the alleged offence. It is well settled that such a statement made to the police is not admissible in evidence under Section 25 of the Indian Evidence Act, 1872, except to the extent it leads to discovery under Section 27. Therefore, prima facie, there is no legally sustainable material to show that the applicant was indulging in sale or supply of intoxicating or stupefying substances.

9. Further, except for Section 123 of the BNS, the remaining offences alleged against the applicant are bailable in nature. Section 123 of the BNS contemplates the act of selling, distributing, or administering any stupefying, intoxicating, or prohibitory substance. From the FIR, it appears that the customers were smoking scented tobacco through hookah. Whether the substance seized contains any intoxicating or injurious elements is a matter pending determination by the Forensic Science Laboratory. Until such a report is received, it cannot be conclusively said that the offence under Section 123 of BNS is made out against the applicant.

10. The applicant is a young man of 21 years of age and is pursuing his education. He has no criminal antecedents. He is stated to be working only as a part-time waiter in the said establishment to earn his livelihood. Continuation of his custody at this stage would amount to pre-trial detention, which is not punitive in nature, but only to ensure his presence at trial. The

applicant has roots in society and there is no material to suggest that he would abscond or tamper with the prosecution witnesses.

11. Having regard to the overall facts and circumstances, the nature of allegations, the absence of antecedents, and the young age of the applicant, I am of the view that the applicant has made out a case for grant of bail. The apprehensions expressed by the prosecution can be taken care of by imposing suitable conditions.

12. 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.293 of 2025 registered with Bhiwandi Police Station for offences punishable under Sections 123, 275, 287 of BNS and Sections 4A and 21A of the COTPA Act and Section 33(w) of the Maharashtra Police Act, upon furnishing cash surety in the amount of Rs.10,000/- (Rupees Ten Thousand Only).
- iii) Within a period of eight weeks from the date of release of the applicant on regular bail, he shall furnish one or more 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.
 - (b) The applicant shall report to the Bhiwandi Police Station twice a month, specifically on the 1st Monday of

each month, between 10:00 a.m. and 12:00 noon, until further orders.

(c) The applicant shall remain present before the Trial Court on each and every date and shall cooperate with the investigation, unless specifically exempted by the Trial Court.

(d) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without prior written permission from 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 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.

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

13. The bail application is allowed and disposed of.

14. All concerned shall act on an authenticated copy of this order.

(AMIT BORKAR, J.)