

Amberkar

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

CRIMINAL BAIL APPLICATION NO.4117 OF 2024

Arif Iqbal Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

**WITH
INTERIM APPLICATION NO.280 OF 2025
IN
CRIMINAL BAIL APPLICATION NO.4117 OF 2024**

Nazibulla Baitulla Gani	.. Intervenor
IN THE MATTER BETWEEN:	
Arif Iqbal Shaikh	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Rajendra Rathod a/w Mr. Umar Dalvi, Advocates for Applicant.
 - Mr. Sukanta A. Karmakar, APP for Respondent No.1 – State.
 - Mr. Maniram Gaud, Advocate for Intervenor.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 27, 2025

P. C.:

1. This is an Application under Section 439 of CrPC¹ seeking regular bail in connection with C.R. No. 134 of 2024 registered with RAK Marg Police Station for offences under Section 302, 307, 504, 506, 143, 147, 148, 149 of IPC². Applicant is arraigned as Accused No.6 in the FIR.

¹ The Code of Criminal Procedure, 1973.

² Indian Penal Code, 1860.

2. The case of the prosecution emanates from an incident between Informant and one Riyaz Qureshi, who is arraigned as Accused No.4 in the FIR. As per prosecution case, Accused No.2 on 19.03.2024 abused and threatened the deceased – victim. Subsequent thereto, Accused No.4 along with his accomplices which included present Applicant gathered near the house of deceased – victim and stated assaulting him and his family members with weapons such as fruit cutting knife, stumps and rods. Subsequent to the incident, the victim was taken to KEM Hospital and FIR was registered. During the course of his treatment, he succumbed to his injuries pursuant to which charge under Section 302 was added.

3. Mr. Rathod, learned Advocate appearing on behalf of the Applicant would submit that the Applicant has been falsely implicated in the case. He would submit that Applicant's name is roped in as a counterblast to an old enmity between the parties and Applicant was not even present at the spot of the incident when it occurred. He would submit that if statements of the witnesses are perused, it indicates that apart from the family members of the deceased, no other independent witnesses have stated about the Applicant's presence at the scene of crime. He would submit that absence of testimony of independent witnesses naming the Applicant's presence corroborates Applicant's version. He would submit that wife of

Applicant has been making persistent attempts to fetch the CCTV footage of the incident but she has been unsuccessful in her pursuit due to the lack of co-operation on the part of authorities.

3.1. He would submit that even if case of prosecution is assumed to be true, even then role of Applicant attributed to him would be to the extent of inflicting fist and kick blows which is not the cause of victim's death. He would submit that prosecution has failed to establish any motive or intention of the Applicant's role or reason to cause death of victim. He would thus pray for the Application to be allowed since without any nexus to the crime in question he is behind bars for the past almost one year.

4. Mr. Kulkarni, learned APP appearing on behalf of Respondent No.1 – State would submit that the offence alleged is serious in nature. He would ardently contest the submissions of Mr. Rathod and would state that Applicant is named by multiple witnesses. He would submit that Applicant was part of the group which thoughtfully planned the attack on victim's family leading to death of the victim.

4.1. He would submit that the incident in question sufficiently indicates lack of regard for law and if let on bail the accused would be a menace to the society and that to the victim's family. He would thus pray for rejection of the Application.

5. Mr. Gaud, learned Advocate appearing on behalf of First Informant Intervenor would submit that the Applicant was a part of the group that hatched the conspiracy to attack his family and was one of the attackers of his deceased son. He would submit that the Family of deceased has been receiving multiple threats from the families of Applicant and other co-accused involved in the crime as a result of which his family has had to relocate their base to another locality. He would submit that enlarging the Applicant on bail would be a threat to the Informant's family who have already lost their son. He would thus pray for the Application to be rejected.

6. I have heard the learned advocates at the bar and with their able assistance, perused the record of the case.

7. The allegation against the Applicant, as per prosecution case is that he was present on the incident spot holding a rod and that he along with two other co-accused hit the deceased on his shoulder and hands.

8. The aforesaid version of prosecution is heavily contested by Applicant. Applicant's assertion is that he was not even present on the incident spot at the time of incident. His spouse has even addressed letters to the Police Authorities to include CCTV recordings as part of the investigation to establish his presence and complicity.

9. It is amply clear that parties are at variance with regards to the material facts of the incident. Another aspect which is amply clear after my *prima facie* perusal of chargesheet is that the case of prosecution against the Applicant, even if taken to be true would not amount to him causing death of the victim. Applicant is alleged as per statement recorded of family members of First Informant to have hit the victim on his shoulder and hand whereas medical records *prima facie* ascribe the immediate provisional cause of death to 'Septicaemia as a complication due to a stab injury to the neck and abdomen', which was caused by the other co-accused person with the weapon.

10. Prosecution may succeed to prove Applicant's common intention in the crime at the stage of trial where his guilt can be established conclusively after examination of relevant witnesses who are privy with such information. At the stage of granting bail and considering the limited material available for me to arrive at a *prima facie* finding, the material placed on record before me *prima facie* does not establish any common intention on part of Applicant to cause death of the victim not to forget that Applicant's presence at the scene of crime itself is heavily contested by him. Nothing prevented the prosecution to demolish Applicant's case by producing and investigating the CCTV footage of the incident or of the scene of crime before or after the incident to establish presence of Applicant.

11. In view of the above *prima facie* observations, present Application is allowed in terms of prayer clause (a) subject to the following terms and conditions:-

- (i) 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;
- (ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) 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;
- (iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;
- (v) 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;

- (vi) Applicant shall co-operate 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;
- (vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (viii) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner; and
- (ix) 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.

12. 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.

13. Bail Application No.4117 of 2024 is allowed and disposed.

14. In view of disposal of Bail Application, pending Interim Application No.280 of 2025 is also disposed.

[MILIND N. JADHAV, J.]

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by RAVINDRA
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2025.03.27
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