

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**INTERIM APPLICATION NO. 1935 OF 2025**  
**IN**  
**CRIMINAL APPEAL NO. 1437 OF 2023**

**Mohd. Usman Bashir Ahmed Shaikh,**  
Age: 55 years, Occupation: Business,  
Residing at: B/201, A1 Salehin Bldg,  
M.H. Mohani Road, Near Kedar Palace,  
Mumbra, Thane - 400 612  
(Currently lodged in Ratnagiri Open Jail)

...Applicant

~ versus ~

- 1. State of Maharashtra,**  
Through, Mumbra Police Station,  
Thane, Sessions Case No. 168/2016,  
C.R. NO. I-41/2016
- 2. Nasreen Bano Sajid Ansari,**  
Age: 36 years, Occupation: nil,  
R/a: Room No. 101, Ground Floor,  
A wing, Sultana Palace,  
Khadi Machine Road, Mumbra,  
Thane - 400 612.

...Respondents

SHEPHALI  
SANJAY  
MORMARE

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**APPEARANCES**

**For the Applicant**

**Mr Aabad Ponda, Senior Advocate,**  
i/b Shrinidhi Sonak

**For Respondent No. 1-State**

**Mr VA Kulkarni, APP**

**For Respondent No. 2.**

**Ms Ilsa Shaikh.**

CORAM : SUMAN SHYAM &  
SHYAM C. CHANDAK, JJ

RESERVED ON : 8TH AUGUST 2025.  
PRONOUNCED ON : 14TH AUGUST 2025.

ORDER (Per Suman Shyam, J):-

1. The Applicant herein was tried along with two other co-accused, viz., Abdul Majid @ Ganna Abdul Rashid Kazi and Siddiqi Kazi for committing offence punishable under Section 302 read with Section 34 of the Indian Penal Code (“IPC”). On conclusion of Trial, by the Judgment dated 8th December 2023 passed by the learned Additional Sessions Judge, Thane, in Sessions Case No. 168 of 2016, all the three accused persons, including the present Applicant were convicted under Section 302/34 of the IPC for committing the murder of one Sajid Ansari and sentenced to undergo imprisonment for life till death. Each of the accused persons was also sentenced to pay fine of Rs. 10,000/-, in default to suffer simple imprisonment for five months.

2. Assailing the Judgment and Order dated 8th December 2023, the Applicant/Appellant has preferred Criminal Appeal No. 1437 of 2023, which is pending disposal before this Court. The

Applicant was arrested on 21st January 2016 and since then he is in custody. Therefore, he has already suffered jail incarceration for a period exceeding nine years and six months. Moreover, the co-accused, viz., Abdul Majid @ Ganna Abdul Rashid Kazi (accused No.1) and Mohd. Siddique Kazi (accused No.3) have already been released on bail by the order dated 14th June 2024 passed by the coordinate Bench (Bharati Dangre & Manjusha Deshpande, JJ) in Interim Application No. 1344 of 2024 and by the order dated 30<sup>th</sup> January, 2024 passed by (Coram : A.S. Gadkari & Shyam C. Chandak, JJ.) in Interim Application No. 81 of 2024, both the Interim Applications arising out of the same Criminal Appeal No. 1437 of 2023. The present Application has been filed by the Applicant (accused No.2) under Section 389 of the Code of Criminal Procedure 1908 (“CrPC”) (relatable to Section 430 of Bhartiya Nagrik Suraksha Sanhita, 2023 (“BNSS”)) with a prayer to suspend his jail sentence and also to release him on bail.

3. The case of the prosecution is based on the testimony of the informant (PW-1), who is an injured eyewitness as well as two other eyewitnesses to the occurrence, viz., PW-3 and PW-4. Evidence available on record suggests that death of the deceased

had occurred due to multiple injuries sustained on his body. PW-1, PW-3 and PW-4 have ascribed specific role to the co-accused as well as to Applicant by deposing that it was the Applicant who had caused stab injury on the back of the deceased. According to PW-1, after giving the stab injury on the waist of the deceased, Sajid Ansari by a knife, the Applicant had twisted the knife inside.

4. The evidence of PW-3 indicates that while the other two co-accused persons were assaulting the victim by means of cricket stumps and kick blows on his head, the Applicant came from behind and assaulted the victim with a knife.

5. PW-4, who is the other eyewitness to the occurrence, has deposed in similar lines by stating that the Applicant had stabbed the victim on the left side of the stomach with a knife and twisted it. He has also stated that while the other accused persons were assaulting the victim by fists and kick blows, the Applicant had stabbed the victim with a knife.

6. Based on such evidence, the leaned Trial Court had convicted all the three accused persons for committing offence under Section 302 read with 34 of the IPC for acting with a

common intention to cause death to the victim and sentenced them as aforesaid.

7. Referring to the materials on record, Mr Ponda, learned Senior Counsel appearing for the Applicant has argued that the incident has its genesis to some animosity between the deceased and the Accused No. 1, in which the Applicant did not have any involvement. According to Mr Ponda, the role ascribed to the Applicant by the eyewitness is of a single injury on the buttock area, which is non-vital part of the body. Pointing out at the inconsistencies/contradictions in the testimony of the eyewitness, Mr Ponda has argued that the Doctor, who has conducted postmortem examination, i.e., PW-6, did not mention about any damage caused to the vital organs so as to substantiate the testimony of the prosecution witnesses that after inflicting the stab injury, the Applicant had twisted the knife. Contending that the buttock area is not the vital part of the body and, therefore, it is evident that there was no intention on the part of the Applicant to cause death to the deceased, Mr Ponda has submitted that this is a case coming within the fold of one of the exceptions laid down in

Section 300 of the IPC and, hence, could invite a lesser sentence for the Applicant.

8. Mr Ponda, learned Senior Counsel has further argued that since his arrest on 21st January 2016, the Applicant has not moved any application for bail either during the trial stage or during the pendency of the Criminal Appeal before this Court. Moreover, the Applicant had displayed exemplary conduct during his incarceration, as a result of which, he has been transferred to the open jail due to his good behavior. Recently the Applicant was granted parol for a period of one month, during which, he had complied with all the conditions and surrender before the authority without any breach of the conditions of parol. Since the co-accused have already been released on bail, hence, submits Mr Ponda, the present is a fit case where the Applicant also deserves to be released on bail during the pendency of the connected Criminal Appeal.

9. The learned Senior Counsel has assured this Court that if bail is granted to the Applicant, he would scrupulously adhere to any and all the conditions imposed by this Court on such behalf.

10. Responding to the above arguments, Mr VA Kulkarni, learned APP, has submitted that the conviction of the Applicant is on the basis of testimony of three eye witnesses, viz., PW-1, PW-3 and PW-4, whose evidence have been found to be reliable by the learned Court below. Since a specific role of causing stab injury to the deceased has been ascribed to the present Applicant by the eye witnesses and the said fact having been established through the medical evidence, there is no justifiable ground for releasing the Applicant on bail by invoking the principle of the parity, since the case of the present Applicant stands on a different footing, as compared to the accused Nos.1 and 3.

11. Supporting the above arguments, Ms Ilsa Shaikh learned Counsel for the intervenor/respondent No. 2 has argued that the Applicant has brutally attacked the deceased with a knife and acted in a cruel manner by twisting the knife so as to ensure that death is caused to the victim. She further submits that the Applicant had arrived at the scene after the other accused, by carrying a knife which goes to show the premeditation and/intent on the part of the Applicant to cause death to the deceased. In such view of the matter, this is not a fit case for invoking the

principle of parity. The bail application, therefore, be rejected by this Court.

12. We have considered the submissions advanced at the bar and have also carefully gone through the material brought before us for considering the bail application.

13. From the testimony of PW-1, PW-3 and PW-4, we find that these eye witnesses have clearly ascribed a specific role to the Applicant by deposing in unison that he was the one who had caused stab injury in the back side of the deceased.

14. From the evidence of PW-6, it appears that there were multiple injuries on the body of the victim, including a stab injury over the left buttock area. However, the postmortem report does not indicate of any damage to the vital organs in the body of the deceased due to such stab injury caused by a sharp pointed weapon. In other words, the version of the eye witnesses that the Applicant had twisted the knife after stabbing the victim does not find support from the medical evidence. Be that as it may, the fact remains that the allegation brought against the Applicant is of

causing single stab injury over the left buttock causing hemorrhage and shock leading to his death. However, it can not be denied that the left buttock ,where the injury was, is not the vital part of the body of the victim. Therefore, whether there was any intention to cause death of the deceased would call for deeper scrutiny by the Court which would be possible only during the final hearing of the Criminal Appeal which is likely to take some time.

15. We have noticed that the Applicant has been awarded the sentence of “rigorous imprisonment for life till death”. Therefore, such a sentence would amount to curtailing the power of remission of the sentence which power is available to the appropriate authority under the Rules. However, after the decision of the Supreme Court in the case of *Union of India Vs V Sriharan @ Murugan & Ors*,<sup>1</sup> law is settled that imposing such a sentence is impermissible in the eyes of law.

16. In *Gauri Shankar vs State of Punjab*,<sup>2</sup> while dealing with an issue of similar nature, it has been held by the Apex Court that

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1 (2016) 7 SCC 1.

2 (2021) 3 SCC 380.

imposing life imprisonment for remainder of life was not within the domain of the Trial Courts.

17. The aforesaid aspect of the matter has again been dealt with by the Supreme Court in the case of *Vikas Chaudhary vs (NCT of Delhi)*.<sup>3</sup> After taking note of the principles evolved in the case of *Union of India vs Sriharan @ Murugan & Ors* (Supra), it was held in the case of *Vikas Chaudhari* (Supra) as follows:

“18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life imprisonment for the remainder of the convict’s life, as an alternative to death penalty. The court, when trying an offence punishable by death penalty or life imprisonment, has merely these two options. While the principles evolved in Sriharan are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the state proposes and urges for imposition of death sentence, it has to, per force provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances—the test propounded in Bachan Singh and examined in many cases; the recent trend being that the reformatory element acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance, i.e., the trial courts; the prosecution (per Bachan Singh) is also under an obligation to show that the mitigating circumstances are absent especially that there are no chances of reformation of the accused. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no

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3 (2023) 19 SCC 144.

idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, being factors that lead to the conviction of the accused) and balancing the mitigating circumstances (which are not matters of the record and have to be adduced by the prosecution and the accused).”

*(emphasis supplied)*

18. From the above, it is apparent that the Trial Court did not have the jurisdiction or authority to impose the sentence of “life imprisonment till death “upon the Applicant. Therefore, whether the jail sentence awarded by the learned Trial Court upon the Applicant would at all be sustainable in the eyes of law, would, be a subject matter of consideration by this Court at the time of final hearing the Appeal.

19. We have also noted that the assertion of the Applicant that due to his good behavior, he has been shifted to the open jail has not been contested by the Respondents. If that be so, as per the applicable rules, the period of remission of sentence applicable in the case of the Applicant would be different in as much as he could be entitled to substantial remission of the jail sentence due to the period spent in the open jail.

**20.** We have also noted that by the orders dated 30<sup>th</sup> January, 2024 and 14th June 2024, the co-accused Mohd. Siddique Kazi and Abdul Majid @ Ganna Abdul Rashid Kazi have been released on bail by a co-ordinate Bench of this Court by setting out clear terms and conditions of bail. We see no valid reason, as to why a similar consideration should not be extended by this Court to the present Applicant as well.

**21.** There is yet another significant aspect of the matter which cannot be lost sight of. As has been noted above, the Applicant has been convicted along with two other accused persons for committing the murder of Sajid Ansari. His conviction under Section 302 of the IPC is with the assistance of Section 34 of the IPC. Since, it is a case of common intention, which to cause death to the deceased, as held by the learned trial Court, hence, the role ascribed to the individual accused persons will pale into insignificance, as the presumption will arise that the end goal of all the convicted accused persons was one and the same, i.e., to cause death to the deceased. In such circumstances, regardless of the specific role ascribed to the convicted accused, the fact that the co-accused persons have been released on bail, in our considered

opinion, would be an additional ground which will weigh in with the Court while considering the bail application of the Applicant. Viewed from that angle, principle of parity will come into play while considering this bail application, on this count as well.

22. We have taken note of the period of incarceration already suffered by the Applicant. We are also persuaded to accept the plea taken by the learned senior Counsel for the Applicant that the possibility of a reduced sentence being imposed upon that Applicant cannot be ruled out in this case. Therefore, having regard to the facts and circumstances of the case as well as the period of incarceration undergone by the Applicant, we are of the view that the present is a fit case for releasing him on bail, more so, since the two co-accused persons have already been released on bail.

23. We, accordingly, order as follows:-

### **ORDER**

- (a) The Applicant, viz., **Mohd. Usman Bashir Ahmed Shaikh** shall be forthwith released on bail in

connection with (Sessions Case No. 168 of 2016) C.R. No. I-41/2016, registered with the Mumbra Police Station, Thane on his executing P .R. bond of a sum of Rs. 50,000/- with one or two sureties in like amount to the satisfaction of the learned Trial Court.

- (b) The Applicant shall appear before the Mumbra Police Station, Thane on the first Monday of every month between 10:00 a.m. and 12:00 noon to record his presence till the Criminal Appeal is disposed of.
- (c) The Applicant shall furnish his contact number and permanent residential address to the Investigating Officer and shall keep him updated in case of any change thereof.
- (d) The Applicant shall not leave the jurisdiction of Thane District without prior permission of the Trial Court.
- (e) The Applicant shall keep the surety alive for the purpose of this bail.

- (f) The Applicant shall desist from threatening or in any manner intimidating the complainant, or any other family members of the informant.
- (g) The Applicant shall maintain good behaviour and shall not commit any offence or indulge in any anti social activity while on bail.
- (h) The Applicant shall ensure due representation before this Court as and when his Criminal Appeal is taken up for hearing.

24. We make it clear that the observations made herein-above are *prima-facie* in nature and have been made for the limited purpose of disposing of the bail application.

25. It is also made clear that violation of the above conditions shall be viewed seriously and can also lead to cancellation of the bail.

26. With the above observations, the Interim Application is allowed and the same stands disposed of.

27. The Registry is directed to forthwith communicate this order to the concerned Jail Authorities at Ratnagiri Open Prison.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)