

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

**INTERIM APPLICATION NO. 2439 OF 2025
IN
CRIMINAL APPEAL NO. 698 OF 2025**

Ganesh Ashok Shinde	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Vikrant Anand Desai h/f. Nilesh Nikole for Applicant.
Mr. Pankaj P. Devkar, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 25 JULY 2025

PC :

1. This application is preferred by the original Accused No.1 for his release on bail during the pendency of his Appeal. The Applicant was one of the seven accused who had faced the trial in Sessions Case No.68 of 2014 before the learned Additional Sessions Judge, Malegaon. The learned Judge, vide his Judgment and order dated 20.05.2025 acquitted the original Accused Nos.2 and 4. The learned Judge convicted rest of the accused including the present applicant for commission of the offence punishable U/s.395 of the I.P.C. and sentenced them to suffer R.I. for ten years

each and to pay a fine of Rs.25000/- each and in default to suffer further R.I. for two years each. They were also convicted for commission of the offence punishable U/s.341 of the I.P.C. and were sentenced to suffer S.I. for one month each and to pay a fine of Rs.500/- each and in default to suffer S.I. for seven days each. Both the substantive sentences were directed to run concurrently.

2. Heard Mr. Vikrant Desai, learned counsel for the Applicant and Mr. Pankaj Devkar, learned APP for the State.

3. The prosecution case is that, PW-4 Chunaram Chaudhari was the owner of a truck. He was conducting his own transport business. The incident took place on 16.02.2014. The registration number of his truck was RJ19/GA-4218. He had loaded his truck with cotton at Bolthan, Taluka Nandgaon, Dist. Nashik. The cotton was weighing 12 tons. He started from Bolthan at about 7:00p.m. At about 9:30p.m. when he was travelling between Nandgaon to Malegaon, about two to three motorcycles intercepted his truck. One of the motorcycle riders entered the truck and gave a blow of knife on his chest and stomach. PW-4 was pushed away. The

assailant sat on the driver's seat and started driving the truck. In the meantime, three others who had already entered the truck, forcibly removed his gold ring and Rs.15000/- cash. His mobile phone was also taken away. The others were riding the motorcycle. The truck was driven for about 50 to 60km. after taking U turn. They unloaded the cotton at some place which was unknown to PW-4. Then they left the truck near the railway crossing at Chalisgaon road, at 5:30a.m. That place was about 10Km. away from Nandgaon. Then they left the place. PW-4 went to Nandgaon police station and lodged his F.I.R.

According to the investigating agency, the convicted accused had committed this offence. The Accused Nos.2 and 4 had helped them in purchasing and selling the cotton. During the investigation, the cotton was recovered.

4. Learned counsel for the Applicant submitted that, there is no admissible evidence led by the prosecution against the Applicant. Almost all the witnesses, except PW-4 Chunaram have turned hostile. Every single pancha for all the panchanamas has

turned hostile. The Investigating Officer could not be examined as he had passed away. The prosecution has not proved its case against the Applicant at all. The only reason for conviction of the applicant and others is the application at Exhibit-98 which was filed by the learned counsel for the accused inadvertently mentioning therein that their identity was not disputed.

5. Learned APP, on the other hand, submitted that the evidence of PW-4 is sufficient to base the conviction and, therefore, conviction was rightly recorded. The Judgment shows that some of the accused were habitual offenders. He, therefore, opposed for grant of bail.

6. I have considered these submissions. As rightly submitted by the learned counsel for the applicant, almost all the witnesses have turned hostile. The I.O. could not be examined. Therefore, the only evidence which requires serious consideration is the deposition of PW-4 Chunaram. Undoubtedly, the record shows that the defence advocate had tendered an application at Exhibit-98. It was basically an application for exemption and from

that point of view it was mentioned that there was no dispute about the identity. I find substance in the submission of the learned counsel for the Applicant that, purpose of that application was only for seeking exemption and for that limited purpose it was mentioned that identity was not disputed. But that did not mean that the accused admitted that they were the offenders and that PW-4 Chunaram had seen them.

7. In this context, the cross-examination of PW-4 is also important. PW-4 Chunaram had admitted in his cross-examination that, he had not seen as to who had stabbed on his chest and stomach and that he had not seen the offender who had taken away his mobile phone and gold ring. He further admitted, that the police had shown the offenders to him. Therefore, there is substance in the submission of the learned counsel for the applicant that there was no proper identification of the applicant and other accused. That being the only evidence, the applicant deserves to be released on bail. Based on this discussion, I am inclined to grant bail to the applicant on certain conditions.

8. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.698 of 2025, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.25000/- with one or two sureties in the like amount.
- ii) The Applicant shall report to Nandgaon police station, on first Sunday of every month between 4:00p.m. to 5:00p.m. till further orders.
- iii) The Application is disposed of.

(SARANG V. KOTWAL, J.)