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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1677 OF 2023

Saif Fareed SayyedApplicant

Vs.

The State of MaharashtraRespondent

**WITH
INTERIM APPLICATION NO. 2788 OF 2025**

Asma Bablu Wasim SayyedApplicant

IN THE MATTER BETWEEN

Saif Fareed SayyedApplicant

Vs.

The State of MaharashtraRespondent

Ms. Sana Raees Khan a/w Ms. Vidya Lahamate a/w Mr. Sumit
Sharma a/w Ms. Neha Balani for the applicant
Mr. Mohd. Moin Khan for the applicant in IA 2788/2025
Mr. A. S. Gawai, APP for the State

CORAM : GAURI GODSE, J.

DATE : 28th JULY 2025

ORDER:

1. By this application, accused no. 1 seeks his enlargement on

regular bail. The applicant was arrested on 2nd June 2020 in connection with C.R. No. 709 of 2020 registered with Kondhwa Police Station, Pune for offences punishable under Sections 302, 120B, 323, 504, 34 of the Indian Penal Code, Sections 4(25) of The Arms Act, 1959 and Section 37(1) read with 135 of the Maharashtra Police Act. The incident occurred on June 1, 2020. The deceased succumbed to the injuries on the same day.

2. Learned counsel for the applicant submits that the accused no. 2, against whom the same role is attributed, and the same material is relied upon by the prosecution, is granted bail by this Court vide order dated 13th March 2025. She, therefore, submits that apart from other grounds, the applicant is entitled to be released on bail on the ground of parity. She further submits that the applicant has been incarcerated for more than five years, and although the trial has commenced, it is unlikely to be completed in the near future, as the prosecution has proposed examining 34 witnesses. She submits that, at present, only two witnesses have been examined.

3. Learned counsel for the applicant submits that, though the

prosecution has relied upon two eyewitnesses, there is a discrepancy in the first informant's statement and the supplementary statement. She submits that in the main statement dated 1st June 2020, the first informant stated that Saif Sayyed and his brother, Fareed Sayyed, assaulted the deceased. She submits that in the supplementary statement, the first informant stated that Fareed is the father of Saif and Tausif, and by mistake, he had taken the name of Fareed instead of Tausif's name. She further submits that, except for the two statements, no other material is seen against the applicant. She submits that in view of the discrepancy in the statement of the eyewitness, the applicant's role in the incident is doubtful. She further submits that the applicant is also entitled to be released on bail on the grounds of long incarceration and parity.

4. Learned APP submits that in addition to the statement of the first informant and his supplementary statement, he relies upon the statement of the son of the deceased, who was 13 years old on the date of the incident. Learned APP submits that even in the statement of the son of the deceased, he has stated that Saif

Sayyed and his brother Fareed Sayyed had assaulted the deceased. Learned APP also relies upon statements of Shadab Ansari and Sohail Usman Khan, who also stated that they had seen the incident, and they saw two unknown persons assaulting the deceased. Learned APP, therefore, submits that considering the direct evidence in the form of eyewitnesses against this applicant, the ground of parity would not apply.

5. The deceased's wife has sought to intervene by filing an intervention application. Learned counsel for the intervener submits that the ground of parity would not be applicable as the antecedents of the co-accused no. 2, who is granted bail, were suppressed from the Court. He points out that F.I.R. No. 0165 of 2018 is pending against the co-accused no. 2. To support his submissions, learned counsel for the intervener relies upon the decision of the Delhi High Court in the case of *Phulmai Tamang @ Neha Vs. State of NCT Delhi*¹, Judgment of Himachal Pradesh High Court in the case of *Keshav Ram Vs. State of Himachal Pradesh*² and also the decision of the Hon'ble Apex Court in the

¹ Bail Appln. 1395/2025 and Crl. M.A. 10870/2025

² AIROnline 2023 HP 1654

case of *Munnesh Vs. State of Uttar Pradesh*³. Learned counsel for the intervener submits that the Hon'ble Apex Court has observed that the criminal history of the applicant is required to be disclosed by the applicant. In the facts of the case before the Hon'ble Apex Court it was held that since the petitioner had suppressed the material facts with regard to his involvement in criminal cases, he would not be entitled to discretionary relief of bail. Learned counsel for the intervener therefore, submits that even in the present case, since the criminal antecedent of co-accused no. 2 was suppressed in the Bail Application No. 17 of 2025; the present applicant would not be entitled to claim parity on the ground that co-accused no. 2 is granted bail.

6. Learned counsel for the intervener further points out that the order passed by the Trial Court, in which the Court directed the accused to secure the presence of their advocate, because repeated adjournments were taken on behalf of the accused. He, therefore, submits that by seeking an order of bail, the accused are deliberately prolonging the trial. He submits that this Court has directed the Trial Court to conclude the trial within the time-bound

³ Special Leave to Appeal (Crl.) No. 1400/2025

schedule. He, therefore, submits that considering the conduct of the applicant and co-accused no. 2, the applicant may not be released on bail.

7. I have carefully perused the statements and other material relied upon by the learned APP. Although direct evidence in the form of eyewitnesses has been relied upon, a discrepancy exists between the first informant's initial statement and his supplementary statement. In the statement of the son of the deceased, he has stated that Saif and his brother, Fareed, had assaulted the deceased. The other two eyewitnesses relied upon by the prosecution are not known to the deceased and the accused. Admittedly, no identification parade was conducted to identify the present applicant. Considering the discrepancies in the statements of eyewitnesses regarding naming the persons who had assaulted the deceased, the involvement of the applicant appears to be doubtful. Except for the statements, there is no other material relied upon by the prosecution.

8. There is no dispute that the allegations against the applicant and the role attributed to this applicant are the same as that of co-

accused no. 2, who is granted bail by this Court. On the objection of criminal antecedent against co-accused no. 2, there is no dispute that F.I.R. lodged against co-accused no. 2, all allegations are bailable offences. Hence, the criminal antecedent against co-accused no. 2, cannot be accepted as objection to apply the principle of parity.

9. Learned APP has relied upon the recovery of clothes of the present applicant and contended that the blood stains found on the applicant's clothes are of the deceased. However, there is no chemical analysis report on record to support this allegation. Another objection regarding the adjournments taken on behalf of the accused due to the absence of an advocate cannot be considered as a ground to refuse bail, in view of the insufficient material against the applicant, long incarceration and the principle of parity. In the present case, admittedly, there is no criminal antecedent against the applicant. Hence, the observations by the Hon'ble Apex Court would not apply against the applicant.

10. In the decision of the Delhi High Court and the Himachal Pradesh High Court, it is observed that to avail the ground of

delay in the trial, to seek enlargement on bail, the applicant has to place on record the order sheets to rule out the possibility that the matter is being adjourned at the request of the applicant himself. In the present case, one order is placed on record by the Intervenor. By the said order, the accused had sought time to challenge the order rejecting the prayer seeking directions to supply CDRs. The trial court granted time; however, it directed the accused to secure the presence of their advocate on every Tuesday and Wednesday of the week, as the trial is to be decided within a time-bound frame. The trial court has issued following directions:

5. In view of above, next schedule date is fixed on 01/07/2025. Accused are hereby directed to secure presence of their Advocate before the Court at 11.00 am sharp on every Tuesday and Wednesday of a week till conclusion of trial with direction of them take the note of order.

11. An advocate engaged by a litigant is not his servant or mouthpiece. An advocate is first an officer of the court. Such directions issued to a litigant to secure the presence of the advocate offends the dignity of the legal profession. The court can

always request the advocate to remain present and co-operate for early disposal. When such a request is made, the advocate as an officer of the court, is bound to respect the same.

12. In the present case, in the absence of any material to show that the trial is prolonged on account of the accused, the applicant would be entitled to seek bail on the ground of long incarceration.

13. Learned counsel for the intervener submits that the applicant's wife has threatened the intervener, and a non-cognizable offence complaint is lodged against her. He submits that, in the event bail is granted, the applicant be directed not to enter the Pune District. There is no criminal antecedent so far as this applicant is concerned. The applicant has been incarcerated for more than five years. The trial, however, has commenced, and only two witnesses have been examined so far. The prosecution proposes to examine a total of 34 witnesses. Hence, the trial is not likely to be completed in the near future. Thus, the applicant cannot be incarcerated for an indefinite period. The applicant has therefore made out a case for the grant of bail on the grounds of insufficient material, long incarceration and the principle of parity.

14. Learned APP has not placed on record any material to support any allegation against the applicant or the co-accused regarding any threats given by them; hence, I see no reason to impose the condition of any restriction to enter Pune District. I do not find any substance in the objection raised on behalf of the intervener that the applicant should be restricted from entering Pune district on the ground that the applicant's wife had threatened the intervener.

15. Hence, the application is allowed by passing the following order.

ORDER

I. The applicant be enlarged on bail in connection with C.R. No. 709 of 2020 registered with Kondhwa Police Station, Pune for offences punishable under Sections 302, 120B, 323, 504, 34 of the Indian Penal Code, Sections 4(25) of The Arms Act, 1959 and Section 37(1) read with 135 of the Maharashtra Police Act on furnishing P.R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.

II. The applicant shall regularly attend all the dates in the Trial Court, unless exempted in writing by the Trial Court.

III. The applicant shall submit particulars of the place of residence and contact number in the Trial Court, and the same shall not be changed without the leave of the Trial Court.

IV. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses, or any person concerned with the case.

V. If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

16. Application is disposed of in the above terms.

17. The intervenor is heard. Hence, the intervention application is disposed of.

18. It is clarified that the observations in this order are limited to

the question of granting bail to the applicant, and the trial shall proceed uninfluenced by the observations made in this order.

[GAURI GODSE, J.]