



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

931 BAIL APPLICATION NO. 287 OF 2026

Alim Isub Shaikh

....Applicant

VERSUS

The State of Maharashtra

.....Respondent

Mr. N. S. Ghanekar, Advocate for Applicant.

Mr. A. R. Kale, Addl. GP for the State.

CORAM : SACHIN S. DESHMUKH, J.

DATE : 26th FEBRUARY, 2026.

PER COURT :

1. Applicant seeks regular bail in connection with Crime No. 505/2024 registered with Pachod Police Station, Dist. Chhatrapati Sambhajnagar (Rural), for the offences punishable under Sections 109, 118(2), 118(1), 115(2), 352, 351(3), 3(5) of Bharatiya Nyaya Sanhita.

2. The case of prosecution is that on 22.12.2024 at about 1.00 pm, the accused persons assaulted Shoukat, the brother of the informant with fists and kicks. Applicant Alim assaulted Shoukat with an axe on head, as a result of which Shoukat fell down on the ground. Thereafter co-accused Kalim and Raisa assaulted Shoukat with the help of an iron rod and spade. When informant and others

tried to intervene, applicant and co-accused issued threats to kill and tried to inflict blows of axe and iron rod on the informant. On the basis of these allegations, First Information Report came to be lodged.

3. Learned Counsel for Applicant submits that false implication of the Applicant is apparent. The assertions levelled against the present Applicant is of blow with the help of an axe. However, the nature of injury sustained by the victim is by hard and sharp weapon. Learned Counsel for Applicant further submits that since the Hon'ble Apex Court enlarged co-accuse Kalim on bail, the present Applicant would be entitled to be admitted to bail on the ground of parity. Hence, prayed to allow the application.

4. Per contra, learned APP has vehemently opposed the application submitting that this is a successive bail application. The earlier application presented by the Applicant bearing Bail Application No. 162/2025 has suffered dismissal wherein this Court has dealt in detail the role assigned to the present Applicant who has inflicted blow of axe on the head of the victim as a result of which the victim collapsed. There is no change in circumstances and as such, the application does not warrant any consideration.

5. Upon hearing both sides and perusing the record, it is observed that this is a successive bail application, the applicant's earlier plea having already been considered and rejected on merits by this Court vide order dated 05.05.2025. While the learned Counsel for the applicant seeks bail on the ground of parity following the release of co-accused Kalim, there is a higher onus on the Court to strictly evaluate whether this constitutes a substantial change in circumstances.

6. The Hon'ble Apex Court in case of Kalyan Chandra Sarkar and others. Vs. Rajesh Ranjan and others [(2004)7 SCC 528], while laying down the guidelines for grant or refusal of bail in serious offences, has observed as under :

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.)

12. In regard to cases where earlier bail applications have been rejected there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then said court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted."

7. Thus, it is well-settled that parity is not an absolute right and must be weighed against the specific role of the accused; since the previous order was passed on merits and no material change in the factual matrix is demonstrated, the mere release of a co-accused does not warrant a reconsideration of the earlier findings.

8. Similarly, the Hon'ble Apex Court in case of Pralhad Singh Bhati Vs. NCT, Delhi [(2001)4 SCC 280], held that on satisfaction of prima facie evidence establishing the guilt of the accused, the bail can be denied.

9. So far as the ground of parity is concerned, it is observed that the role attributed to the present Applicant is clearly distinguishable from that of co-accused Kalim based on the nature of the weapon used and the manner of the assault. While co-accused Kalim is alleged to have used an iron rod, the Applicant was armed with an axe, a far more lethal weapon and is further has initiated the assault.

10. As already detailed in the earlier order, the allegations against the Applicant are specific and significantly more severe, highlighting his 'primary role' in the commission of the offence. Given this marked distinction in the overt acts and the potential of the weapon used, the Applicant cannot claim parity with the co-accused Kalim whose role is of a lesser degree.

11. At this juncture, it would be apt to reproduce the observations rendered by the Hon'ble Apex Court in the case of Neeru Yadav v. State of U.P. Y another, (2015) 15 SCC 422:-

“13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus:-

“Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and

the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters.

14. E. Barrett Prettyman, a retired Chief Judge of US Court of Appeals had to state thus:-

“In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance without which liberty does not exist. They are the essence of liberty. The great problem of the democratic process is not to strip men of restraints merely because they are restraints. The great problem is to design a system of restraints which will nurture the maximum development of man’s capabilities, not in a massive globe of faceless animations but as a perfect realisation, of each separate human mind, soul and body; not in mute, motionless meditation but in flashing, thrashing activity.

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and 9 Alfred Howard, The Beauties of Burke (T. Davison, London) 109 10 Speech at Law Day Observances (Pentagon, 1962) as quoted in Case and Comment, Mar-Apr 1963 such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

16. In this regard, we may profitably reproduce a few significant lines from Benjamin Disraeli:-

“I repeat..... that all power is a trust-that we are accountable for its exercise- that, from the people and for the people, all springs, and all must exist.”

12. The Hon'ble Apex Court in the case of Mahipal Vs. Rajesh Kumar and others, **AIR 2020 SC 670**, has laid down the principle

that bail can be refused when the material produced by prosecution establishes a clear prima facie case. The Court should not conduct a mini-trial; it should only examine whether the available evidence links the accused to the alleged offence.

13. In the present case, the principle of parity as pressed into service is not available to the Applicant. The role of the present Applicant was already dealt in detail in the earlier bail application and is found to be quite distinct from that of the co-accused. In the absence of any other substantial change in circumstances, parity cannot be treated as the sole basis for bail, predominantly in a successive application. Furthermore, as this Court has already considered the submissions in detail and declined to exercise discretion vide order dated 05.05.2025, revisiting the said findings and taking a different view would be inappropriate.

14. Hence, I am not inclined to exercise discretion in favour of the Applicant, and as such, the application stands rejected.

(SACHIN S. DESHMUKH, J.)

dyb