

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 3905 OF 2024

Mohd. Hashim Abul Wafa Khan	Versus	Applicant
State of Maharashtra		Respondent
WITH		

INTERIM APPLICATION NO. 4489 OF 2024

Sajid Abdul Wahab Shaikh	Versus	Applicant
State of Maharashtra & Anr		Respondents

Mr. Shirish Gupte, Senior Advocate a/w Mr. Pandit Kasar for the Applicant.
Mr. Sudeep Pasbola, Senior Advocate, a/w Ayush Pasbola, Chinmay Godse, Manan Daga for the Intervener in I.A. 4489/2024
Ms. Rajeshree Newton APP for the Respondent-State

CORAM: R. M. JOSHI, J.

DATED: 05th MARCH, 2026

PC:-

1. These are Applications filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (for short 'BNSS') seeking regular bail in connection with CR No.950 of 2024 registered with Shanti Nagar Police Station, Bhiwandi for the offence punishable

under section 109, 143, 147, 148, 149, 302, 307 and 120(B) of Indian Penal Code (for short **IPC**) and Section 4 and 25 of the Arms Act, 1951 and under Sections 37 (1) and 135 of Maharashtra Police Act, 1951.

2. As per the case of the prosecution on 02.04.2024 at about 6:30 p.m. informant/injured witness, his brother Sonu and Asif were sleeping at their house, at that time he received phone call from his friend, who told him about the same person causing assault of his maternal uncle-Jubir. He therefore went to the spot at KGN Chowk, he found that Arif, Abid, Babulal, Arif son Fardeen, Sadik, Shakil, Samir, etc. were brutally assaulting his maternal uncle Zubir and Ishtiyag, Noyeb, Shahbaz Shaikh and Asif Shaikh with a sword-like weapon, Knife and Wooden sticks. In the said incident two of the injured persons died and others sustain serious injuries. On completion of investigation chargesheet is filed.

3. Learned counsel appearing on behalf of the applicant submits that here in this case there is no evidence to indicate involvement of the applicant in the crime in question. It is his submission that admittedly the applicant was neither carrying weapon nor has caused assault on any of the persons, either injured or deceased. He further argued that while granting bail to co-accused-zeeshan, this Court has taken the inconsistencies in the statement of informant and eye-witnesses into consideration, with regard to the alleged exhortation on the part of the co-accused and grant him bail. According to him the said order is confirmed by the

Hon'ble Supreme Court. It is thus his submission that having regard to the similarity of the role attributed to the applicant as compared to the accused who is on bail, the present bail application deserves to be allowed. Apart from this he placed reliance the order of this Court in Bail Application Bearing No. 485 of 2025 dated 07.02.2025, wherein bail was granted to co-accused-Annu.

4. Learned counsel for the APP and learned counsel for the informant opposed the application. It is their contention that the role of present applicant differs from the co-accused by referring to the material statements on record. It is contended that not only informant but also injured witnesses and other witnesses consistently state about the applicant instigating the assailant to kill deceased. In this regard reference is made to the statement of Sajid, Asif and other witnesses. Learned counsel for the informant drew attention of the Court order dated 19.08.2025 passed in Bail Application Bearing No. 2556 of 2025, in the case of co-accused-zeeshan. It is his contention that since the allegation of exhortation was absent in the version of witnesses, and as the allegations were general in nature without attributing in specific overt act bail came to be granted to the said accused. It is submitted that since the applicant was member of unlawful assembly and there is specific evidence indicating his involvement in the crime, it can be said that he was sharing common object with other members of unlawful assembly and hence vicariously responsible for their acts.

It is their submission with regard to the material evidence on record, this is a not fit case for grant of bail to the applicant.

5. There cannot be any dispute with regard to the fact that an incident occurred on 03.04.2024, in which two persons died during assault caused by the other accused. In the said incident weapons were used for causing of assault. The case of the prosecution is that the applicant was member of unlawful assembly and shared common intention of killing two deceased persons and causing injuries to other witnesses.

6. *Prima-facie*, perusal of the record indicates that there are statement of number of witnesses which indicate the *prima-facie* existence of common intention shared by applicant with the actual assailants. Here as per informant, applicant is the person who was instigating the assailants to kill. The statement of Sajid also indicates that the applicant was insisting for assault with sword and not by stick. There would be no reason for this Court not to take into consideration the said statement which is further supported by statement of another witness-Asif. Thus, distinction can be drawn from the evidence against the present applicant is compared to the said co-accused who are enlarged on bail. This Court therefore finds *prima-facie* substance in the contention of counsel for the Informant and learned counsel for the APP that there is material on record to indicate sharing a common intention by the applicant with co-accused in killing of deceased thus there is

reason to accept complicity of the applicant in this crime of murder.

7. Hence, the applicant has failed to make the case for enlargement on bail, consequently Bail Application Bearing No. 3905 of 2024 stands dismissed, Interim Application Bearing No. 4489 of 2024 stands disposed of.

(R. M. JOSHI, J.)