

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2147 OF 2025

Naresh Dhansingh Thapa	...Applicant
<i>Versus</i>	
State of Maharashtra	...Respondent

Ms. Aneesa Cheema, for the Applicant.

Mr. Hitendra J. Dedhia, APP for the Respondent - State.

PI – Prashant Nagtilak a/w PSI – Usha Khose, MHB Colony Police Station, Mumbai, present.

CORAM: R. M. JOSHI, J.

DATED: 7th APRIL, 2026.

PC:-

1. The Applicant seeks his enlargement on bail in connection with CR No.613 of 2021 registered with MHB Colony Police Station, Mumbai, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC).

2. It is the case of the prosecution on 28th July, 2021 at about 09:35 p.m. police havildar Jadhav was on night duty and at the spot of incident, he noticed a quarrel between three transgenders. One of them was wearing saree, another one was wearing half pant and T-shirt and third one was in full pant and T-shirt. The person who was wearing full pant and T-shirt was assaulted by knife by the person wearing saree. The injured was taken to the hospital but was declared dead before admission. The offence came to be registered against the present Applicant and the co-accused.

3. Learned counsel for the Applicant submits that even if the case of the prosecution is considered to be true no offence punishable under Section 302 could be made attributable against the Applicant. In this regard, she drew attention of the Court to the FIR as well as the statement of eye witnesses who specifically attribute overt act of causing assault with knife to the co-accused and not the present Applicant. It is her submission that there is nothing on record to show that the Applicant even had instigated the co-accused to kill the deceased. It is her submission that the Applicant was arrested in the year 2021 and till date trial has not started and is not likely to get over within a reasonable time as thirteen witnesses are yet to be examined.

4. Learned APP opposed the application by citing the seriousness of the crime. It is his submission that involvement of the Applicant in the incident of assault can be seen from his presence at the spot of the incident. It is further pointed that the stage of proceeding before the Trial Court is for recording of the evidence of witnesses and hence it is not a fit case for grant of bail.

5. *Prima facie* perusal of record indicates that though the Applicant was present at the spot, there is no overt act attributed to him in causing assault on the deceased. Perusal of the FIR lodged by the police personnel so also the statements of witnesses indicate that the assault caused by the co-accused and not by the Applicant. In such circumstances, in absence of any evidence indicating that the Applicant aided, abetted or instigated the co-accused to kill the deceased, the offence punishable under Section 302 may not get attracted against him.

6. Though the stage of the trial is for recording of evidence in view of the pendency before the Trial Courts, it will take more than reasonable time for examining thirteen witnesses. In any case, having regard to the *prima facie* consideration of evidence on record, the role of the Applicant for committing murder of the deceased cannot be accepted. The Applicant is in jail for last five years. He has no criminal history and he is not likely to flee from justice. Hence, following order is passed.

ORDER

- i) The Bail Application is allowed.
- ii) In connection with C.R. No.613 of 2021 registered with the MHB Colony Police Station, Brihanmumbai City, the Applicant be enlarged on bail on furnishing PR Bond of Rs.15,000/- with one surety in the like amount, to the satisfaction of the Trial Court.
- iii) The Applicant shall not tamper with or interfere with the prosecution evidence in any manner whatsoever.
- iv) The Applicant shall attend all dates of hearing before the Trial Court unless exempted.

7. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

(R. M. JOSHI, J.)