

JYOTI
RAJESH
MANE

Digitally signed
by JYOTI
RAJESH MANE
Date: 2026.04.07
19:23:05 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3876 OF 2025

Mohammad Fasal Siddiqui Gilitwala

Age 50 years,

Room No. 9/02, 5th Floor, 80/82, Sonawala

Building, Kambekar Street,

Chinchbunder, Mumbai -400009.

...Applicant

Versus

State of Maharashtra

(Through L.T.Marg Police Station.)

...Respondents

Mr. Ishrat Ali Khan a/w. Mr. Mohammed Ahmed Khan, for Applicant .

Mrs. S.S.Kaushik, APP for Respondent – State.

PI Ajay V. Ghosalkar, of L.T.Marg Police Station present.

CORAM: AARTI SATHE, J.

DATE: 07 APRIL 2026

P.C.

1. By this application the applicant seeks his enlargement on bail in connection with C.R.No.61/2023 dated 23rd January 2023 registered with L.T.Marg Police Station, Mumbai for having committed offences punishable under Sections 394, 395, 419, 506(2) and 120(B) of the Indian Penal Code.

2. In the present case, there are in all seven accused persons, and the Applicant is arraigned as Accused No.1. It is the case of the prosecution that the Applicant, along with certain co-accused, visited the office of the complainant and falsely represented themselves as officers of the Enforcement Directorate. At about 2:00 p.m., the Applicant along with other co-accused persons entered the shop of

the complainant, conducted a search of the said premises, and forcibly took away cash amounting to Rs.2,25,00,000/- and gold weighing approximately 3000 grams.

3. It is further alleged that the accused persons also searched the workers of the informant and, from their possession, took approximately 2.5 kilograms of gold. Additionally, they searched the counter of the shop and removed about 500 grams of gold. Thus, the accused persons are alleged to have committed dacoity of cash, gold, and mobile phones, collectively valued at approximately Rs.3.95 crores.

4. On the basis of the aforesaid incident, the complainant lodged a complaint with L.T. Marg Police Station, Mumbai pursuant to which FIR No. 61/2023, came to be registered. Upon completion of the investigation, a chargesheet has been filed before the learned Sessions Court and the matter is registered as Sessions Case No. 521 of 2023.

5. The Sessions Court, by its impugned order dated 11th December 2023, rejected the bail application of the present Applicant. Being aggrieved by the said order, the Applicant has preferred the present Bail Application.

6. Mr. Khan, learned counsel appearing for the Applicant, submits that the entire amount of Rs.2,25,00,000/- and the gold allegedly robbed by the Applicant along with the co-accused have already been recovered. He further submits that the co-accused persons have been granted bail by the learned Sessions Court as well as by this Court. In particular, he points out that in the case of co-accused Vishakha Mudhole, whose role is similar to that of the present Applicant, bail has been granted by the Sessions Court by order dated 4th December 2024. He therefore

submits that, on the principle of parity, the present Applicant is also entitled to be released on bail.

7. Per contra, Mrs. Kaushik, learned APP appearing on behalf of the State, has opposed the present bail application. She submits that the Applicant ought not to be released on bail on the ground that he is a habitual offender. It is further contended that the Applicant is the mastermind of the alleged offence and has played the main role in the commission of the dacoity. Therefore, according to her, the role attributed to the Applicant cannot be equated with that of the other co-accused who have been enlarged on bail. On these grounds, she prays that the present bail application be rejected.

8. I have heard the learned counsel appearing on behalf of the respective parties and have perused the record with their assistance. I have also considered the orders passed by this Court granting bail in the cases of co-accused, including Akbar Abdul Sattar Qureshi, as well as the orders passed by the learned Sessions Court granting bail to co-accused Vishakha Mudhole, Mr. Kadar Ibrahim Shaikh, Mohd. Razi Ahmad Mohd. Rafiq, and Shamshokar Maqbul Hasan Ansari.

9. Though the roles attributed to some of the co-accused may be different and distinct, it is not in dispute that they were acting in concert with the present Applicant. However, insofar as co-accused Vishakha Mudhole is concerned, who has already been enlarged on bail by the Sessions Court, her role appears to be similar to that of the present Applicant and stands on the same footing.

10. The Applicant has been in custody for a period of more than three years. The chargesheet in the present case has been filed on 19th April 2023, and

since then, the trial has not progressed. The delay in conclusion of the trial is also a relevant factor to be considered while deciding a bail application. In a catena of decisions, the Supreme Court has held that where an undertrial prisoner has undergone prolonged incarceration and there is no likelihood of the trial being concluded within a reasonable time, the Constitutional Courts may exercise their powers to grant bail, keeping in mind the settled principle that bail is the rule and jail is the exception.

11. Further, considering the principle of parity, this Court is of the view that the Applicant deserves to be enlarged on bail. The Supreme Court in a recent decision of *Gulfisha Fatima Vs. State (NCT of Delhi)*¹ has upheld the principle of parity and held that without showing any distinguishing material between co-accused, denial of bail would constitute hostile discrimination vis-a-vis a similarly situated co-accused, offending Article 14 of the Constitution of India and the Doctrine of parity. The relevant paragraphs of the aforesaid decision are reproduced below:

421. The allegations attributed to the Appellant i.e. assignment of protest sites, coordination of local mobilisation, participation in meetings of DPSG members, and logistical execution of protest activities are substantially identical to the allegations against co-accused Natasha Narwal and Devangana Kalita, who allegedly conveyed DPSG directions to the Appellant and jointly coordinated the Seelampur/Jafrabad protest sites.

422. Once bail has been granted to co-accused who stand on the same factual and legal footing in terms of alleged roles, meetings, communications, and purported execution on the ground, continued incarceration of the Appellant violates the settled principle of parity.

423. The prosecution's evidentiary foundation against the Appellant including statements of protected witnesses, alleged electronic presence in meetings, reliance on WhatsApp groups, and alleged mobilisation of women mirrors the nature and quality of evidence relied upon against co-accused Natasha Narwal and Devangana Kalita, who were enlarged on bail despite similar reliance on anonymous witness testimony, electronic traces of

¹ 2026 SCC OnLine SC 10

presence, and allegations of mobilisation and logistical facilitation.

424. In the absence of any distinguishing material against the Appellant, denial of bail would constitute hostile discrimination vis-à-vis similarly situated co-accused, offending Article 14 and the doctrine of parity. Accordingly, and keeping in view the differentiated footing on which the prosecution itself places Gulfisha Fatima as compared to the alleged masterminds Umar Khalid and Sharjeel Imam, this Court is of the considered view that further detention is not warranted at this stage. Subject to conditions ensuring regular attendance before the trial court, restrictions on contact with prosecution witnesses, and abstention from public commentary relating to the case and further conditions enumerated hereinbelow., the appellant is held entitled to be enlarged on bail. Nothing stated herein shall be treated as an expression on merits or an assessment of guilt.

(emphasis supplied)

12. The submission advanced by the learned APP that the Applicant is a habitual offender cannot be accepted. There are no criminal antecedents attributed to the present Applicant. The reliance placed on FIR No. 65/2023 to contend that the Applicant is a habitual offender is misplaced, as the said FIR pertains to the same incident of dacoity. The said FIR appears to have been registered in respect of recovery of part of the stolen property/money from a different location and cannot be treated as an independent offence so as to label the Applicant as a habitual offender.

13. This Court is, therefore, inclined to accept the contention of the learned counsel for the Applicant that the Applicant has no criminal antecedents and cannot be termed as a habitual offender. Furthermore, out of the alleged robbed amount of Rs.2,25,00,000/-, Rs. 2,11,60,000/- and the 3000gms. of gold have already been recovered from the Applicant and the other co-accused. In these circumstances, and having regard to the overall facts of the case, I am inclined to enlarge the Applicant on bail. Hence the following order:

ORDER

1. The Bail Application is allowed.
2. The Applicant/Accused, *Mohammad Fasal Siddiqui Gilitwala*, is directed to be enlarged on bail in connection with C.R. No. 61/2023 registered with L.T. Marg Police Station, Mumbai, for the offences punishable under Sections 394, 395, 419, 506(2) and 120(B) of the Indian Penal Code, on his executing a P.R. Bond in the sum of Rs. 50,000/- with one or two local sureties in the like amount.
3. The Applicant shall attend the trial before the learned Trial Court on each and every date unless specifically exempted by the Trial Court.
4. The Applicant shall report to L.T. Marg Police Station, Mumbai, once every month, i.e., on the first Monday of each month between 11:00 a.m. and 2:00 p.m.
5. The Applicant shall surrender his passport, if any, to the Investigating Officer, if not already deposited.
6. The Applicant shall not leave India without prior permission of the Trial Court.
7. The Applicant shall not tamper with the evidence or attempt to influence or threaten any witnesses or any person connected with the case.
8. The Applicant shall furnish his residential address and contact details (mobile number) to the Trial Court immediately upon release. In the event of any change in the same, he shall forthwith inform the Trial Court as well as the Investigating Agency.
9. The Applicant shall cooperate with the Trial Court for the expeditious disposal of the case.
10. In the event of breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of bail.

11. It is clarified that the observations made herein are prima facie in nature and confined to the adjudication of the present bail application. The learned Trial Court shall decide the case on its own merits, uninfluenced by any observations made in this order.

(AARTI SATHE, J.)