

Navnath Waghmare (RA)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 5301 OF 2024

Faradeen Arif Khan
Versus
State of Maharashtra

Applicant
Respondent

WITH

INTERIM APPLICATION NO.51 OF 2025

Sajid Abdul Wahab Shaikh
Versus
State of Maharashtra & Anr

Applicant
Respondents

Mr. A.K. Momin, Afroz Momin, Nikhat Momin for the Applicant.
Mr. Amin Solkar a/w Mohd Taha for Intervenor in I.A. 51/2025
Ms. Shilpa Gajare and 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 (FIR No. 939 of 2023) 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, 1959 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, his uncle Sadik, Shakil, Samir, Ishtiyah, Noyeb, Shahbaz Shaikh and Asif Shaikh etc., were brutally assaulting his maternal uncle 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 for the applicant submits that co-accused against whom similar role has been attributed are granted bail by this Court or Trial Court. It is his further submission that while granting bail to co-accused-Zeeshan, this Court has taken note of the inconsistencies in the statement of witnesses with regard to role of the accused in the crime. It is his further submission that similarly placed accused Annu @ Mohammad Hanif Unus Shaikh has been granted bail. According to him having regard to the nature of disputes between the parties, the possibility of false implication of the applicant is not ruled out. To support this submission he took this court through the statements of witnesses

recorded during the course of investigation. According to him presence of applicant is not seen at spot from CCTV footage transcripts on record. It is contended that applicant has no criminal history and is not likely to flee from justice. Bail is also shown on the ground that applicant is of young age.

4. Learned counsel for the APP and learned counsel for the Intervener/Informant opposed the application. It is contended that there is evidence in the form of statement of injured witness, who specifically states about the role of the present applicant in the crime in question. It is further argued that father of the Applicant had lodged counter report in respect of the same incident wherein presence of the applicant is admitted. It is therefore, their contention that *prima-facie* there is evidence on record in order to show complicity of the applicant in the serious crime of murder.

5. No doubt this Court as well as Trial Court has enlarged the some of the accused persons on bail. Question arises as to whether the role attributed to the present applicant is similar to that of the accused who are granted bail. *Prima-facie*, perusal of chargesheet indicates that injured witnesses have specifically stated about accused-applicant being present at the spot with weapon and causing assault on injured as well as others. There is no such specific allegation against the persons who are enlarged on bail. Insofar as contention of applicant with regard to his absence at the spot when the incident in question occurred, *prima-facie* this Court finds substance in the contention of counsel for the intervener that

there is evidence on record in the form of report lodged by the father of the applicant indicating his presence at the spot at the time of occurrence of incident. Once there is evidence showing his presence at the spot and there are specific attributions against him of committing assault on injured witnesses and deceased persons, question of grant of bail in case of offence under Section 302 of IPC does not arise.

6. The applicant therefore, neither on parity nor on merit is entitle for bail.

7. Consequently, Criminal Bail Application bearing no. 5301/2024 stands dismissed. Interim Application bearing no. 51/2025 stands disposed of.

(R. M. JOSHI, J.)