

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.3996 OF 2025

Akash Ishwar Kharwa ...Applicant
Versus
State of Maharashtra and Anr. ...Respondents

WITH
INTERIM APPLICATION NO.219 OF 2026
IN

CRIMINAL BAIL APPLICATION NO.3996 OF 2025

Shivam Sanjay Upadhyay ...Applicant
Versus
State of Maharashtra and Anr. ...Respondents

Mr. Amrish Salunke a/w Durgesh Pandey, Mirza Mohiuddin Baig,
Priyanka Kalekar and Sabiha Khan, for the Applicant.
Mr. A.S. Gawai, APP for the Respondent - State.
Mr. Ghanshyam Upadhyay a/w Vijay Jha i/by Law Juris, for the
Intervenor.
PSI – Shankar Khade, Andheri Police Station, Mumbai, present.

CORAM: R. M. JOSHI, J.

DATED: 24TH APRIL, 2026.

PC:-

1. The Applicant seeks his release on bail in connection with CR No.533 of 2025 dated 25th June, 2025, registered with Andheri Police Station, for offence punishable under Sections 109, 352, 115(2), 351(2), 238 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').

2. The First Information Report lodged with the concerned police station indicates that according to the Informant, on 25th June, 2025, at about 02:47 a.m., he received a phone call from his friend who informed him about the friend and others being abused by the present Applicant and co-accused. The Informant therefore went to the spot and tried to convince the Applicant and others not to abuse the friends of the Informant. In the meantime, there was a quarrel between them. The allegation is that the Applicant has assaulted the Informant with a knife on his abdomen. It is also claimed that when the Informant was being taken to the hospital, the Applicant had threatened the auto-rickshaw drivers and other persons who wanted to help the Informant and others. After the occurrence of the said incident, the place i.e. the hotel where the incident occurred, was closed and the waiter and auto-rickshaw drivers ran away from the spot. On the basis of this information, offence came to be registered. The Informant was sent for medical examination. His medical certificate came to be included in the investigation papers. Statements of witnesses were recorded. Now, after conclusion of investigation, the charge-sheet has been filed.

3. Learned counsel for the Applicant submits that in the instant case the Applicant has recorded crime against the Informant and others with the same police station. In this regard, it is submitted that in the said incident, the Applicant was assaulted by the Informant on his head with an iron skimmer (झारा) and Applicant sustained injury. It is his further argument that herein this case, the medical certificate indicates that simple injuries caused to the Applicant and as such the offence under Section 109

of the BNS does not get attracted to the present case. It is his further argument that in cross complaint the Informant has been granted anticipatory bail by this Court with following observations:

“Pursuant to the above order Mr. Dabke, learned APP for Respondent - State makes statement before the Court that investigation has been completed and prosecution shall file chargesheet within a period two weeks from today. Statements of all witnesses have been recorded. In view of the fact that this is the case of cross FIRs and members of both sides having been grievously injured and as delineated in the aforesaid order, I am of the opinion that Applicant has made out a case for grant of Anticipatory Bail.”

4. It is his submission that on conclusion of investigation and filing of the charge-sheet, further custody of the Applicant is not necessary.

5. Learned APP opposed the application by citing the statement of witnesses indicating the assault on Informant being caused by the Applicant. It is his submission that there is injury certificate indicating the injury deep in nature caused to the Informant and, which according to him shows the attempt to commit murder of the Informant. It is claimed that the Applicant has nine antecedents and in case he is convicted in one of the crimes under the NDPS Act.

6. Learned counsel for the Intervenor/Informant submits that even on the previous occasion, the incident occurred in which assault was caused on Informant by the Applicant. He further submits that with regard to the previous offence, the Investigating

officer of the present crime, had not conducted the investigation properly and hence the Division Bench of this Court has directed applying provisions of Section 326 of the Indian Penal Code to the said crime. He drew attention of the Court to the statements of witnesses to argue that the Applicant has inflicted a stab injury to the Informant. To support his submission that there is incorrect mention in the medical certificate about the injury being simple in nature, he placed reliance on the photographs of the injured indicating the nature of injury caused to him. It is his submission that during the pendency of the application the brother of the Applicant threatened the Informant. According to him, there is a CCTV footage of the incident and which is required to be perused for the purpose of deciding the present application. He submits that perusal of the same indicates as to who has caused the injury on the Informant.

7. He placed reliance on on the judgments of the Hon'ble Supreme Court indicating the considerations for the grant of bail. According to him, once the offence is made out against the Applicant, the antecedents against him would make him disentitle to bail. He relied upon following judgments:

*1. State (CBI) v. Amarmani Tripathi*¹

*2. Neeru Yadav v. State of Uttar Pradesh & Anr.*²

*3. Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.*³

¹ (2005) 8 SCC 21

² (2014) 16 SCC 508

³ (2002) 3 SCC 598

4. *Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Anr.*⁴
5. *N. Kannapan Vs. State*⁵
6. *Anil Kumar Yadav Vs. State (NCT of Delhi)*⁶
7. *Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr.*⁷
8. *Gobarbhai Naranbhai Singala Vs. State of Gujarat & Ors.*⁸
9. *State Vs. Captain Jagjit Singh*⁹
10. *Dipak S. Mehta Vs. CBI & Anr.*¹⁰
11. *Chaman Lal Vs. State of U.P. & Anr.*¹¹
12. *Ajay Kumar Sharma Vs. State of U.P. & Ors.*¹²
13. *Lokesh Singh Vs. State of U.P. & Anr.*¹³
14. *Salim Khan Vs. Sanjai Singh & Anr.*¹⁴
15. *Younus Bin Omer Yafai & Ors. Vs. State of Andhra Pradesh*¹⁵
16. *Prahlad Singh Bhati Vs. NCT, Delhi & Anr.*¹⁶
17. *Krishna Surendra Singh Vs. State of Maharashtra*¹⁷

4 (2004) 7 SCC 528
5 (2013) 2 SCC 177
6 (2018) 12 SCC 129
7 (2010) 14 SCC 496
8 (2008) 3 SCC 775
9 1960 SCC OnLine SC 2
10 (2012) 4 SCC 134
11 (2004) 7 SCC 525
12 (2005) 7 SCC 507
13 (2008) 16 SCC 753
14 (2002) 9 SCC 670
15 (2013) 1 SCC 365
16 (2001) 4 SCC 280
17 2016 SCC OnLine Bom 12979

8. There cannot be dispute made with regard to the proposition of law laid down in the judgments cited supra. The sum and substance of the position of law as it appears from judgments is that while granting bail the Court should take into consideration, nature, gravity and severity of crime. Similarly, the Courts are expected not to grant bail in heinous crimes. Insofar as antecedents are concerned, though antecedents are not sole ground to reject the bail, it becomes one of the considerations for its determination.

9. It is alleged that present investigating officer in previous crime has not carried out proper investigation and hence order came to be passed by Division bench of this Court directing addition of charges against the Applicant. It is however relevant to take note that though it is sought to be canvassed by the counsel for the Intervenor/Informant that in case offence is made out against any Applicant and the same is heinous in nature, the Court is required to take into consideration the previous antecedents too. At this stage, though it is sought to be argued on behalf of the Intervenor/Informant that investigation into the crime has not been conducted properly, there is nothing on record to indicate that any steps were taken by the Informant in this regard. Needless to say that this Court is required to take into consideration the material placed before the Court in charge-sheet in order to decide the application for bail.

10. *Prima facie* perusal of the record shows that the certain incident has definitely occurred during the intervening night of 25th June, 2025 and 26th June, 2025. This can be

ascertained from the statements of the witnesses recorded in the present investigation. Undeniably, there are two reports came to be lodged by two groups in respect of occurrence of same incident. This Court though does not wish to consider material placed on record in respect of investigation in the crime registered by Applicant, suffice it to say that quarrel and fight did occur in these groups. The Informant / injured was referred for medical examination. The medical officer found injury caused to him as “simple injury”. There is nothing on record to show that any dispute/challenge was made to the said medical opinion by the Informant till date.

11. Apart from the fact that there was a fight between two groups, the record further shows that this is a case of a single blow being inflicted on the Informant. The question would arise as to whether in case of such fight, the single blow attributed to the Applicant would be construed as an attempt to commit murder. Needless to emphasise that this is a matter which would fall for decision of the Trial Court. Suffice it to record that *prima facie* there is material on record in the form of the injury certificate indicating that simple injury has been caused to the Applicant. The photographs filed by Informant on record indicate oozing of blood from the wound, however, it is not open for this Court to substitute its opinion to the opinion of the medical officer with regard to nature of injury and to call the said injury as grievous injury. In any case with single injury caused to the Informant it is difficult to attribute offence of Section 109 of the BNS.

12. Once it is held *prima facie* that offence under Section 109 of the BNS may not get attracted against the Applicant, merely because he has criminal history, bail can't be rejected. Considering the aforestated facts, when the charge-sheet has been filed, there is no propriety in keeping the Applicant in jail by way of pre-trial sentence. Insofar as the apprehension of the Informant is concerned, appropriate conditions can be imposed for the said purpose. Hence, following order.

ORDER

- i) The Bail Application stands allowed.
- ii) In connection with CR No.533 of 2025 dated 25th June, 2025, registered with Andheri Police Station, the Applicant be enlarged on bail on furnishing PR Bond of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the Trial Court.
- iii) The Applicant shall not enter the jurisdiction of Meghwadi Police Station till conclusion of the trial.
- iv) The Applicant shall not tamper with or interfere with the prosecution evidence in any manner whatsoever.

13. 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.)

14. At this stage, learned counsel for the Intervenor / Informant seeks stay of the order, to challenge the same before Hon'ble Supreme Court.

15. Since this Court has recorded reasons for grant of bail and liberty of an individual is involved, this Court finds no reason / justification to stay its order. Hence, request stands rejected.

(R. M. JOSHI, J.)