



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [B.A.] NO. 263 OF 2026

Arbazkha S/o Ajharkha Pathan

-- VERSUS --

State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A.C. Jaltare, Advocate for the Applicant.

Ms. S.Z. Haider, A.P.P. for the Non-applicant/State.

CORAM : M.M. NERLIKAR, J.

DATE : MARCH 23, 2026.

Heard.

2. The present application is filed seeking regular bail in Crime No.87/2022 for the offence punishable under Sections 307, 395, 147, 148, 149 and 323 of the Indian Penal Code, 1860, read with Sections 4 and 25 of the Indian Arms Act, 1959, Section 135 of the Maharashtra Police Act, 1951, and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, registered with Police Station Kurkheda, District Gadchiroli.

3. The crime is registered on the basis of report lodged by Manoj Nilkant Dunedar, on an allegation that on 28/05/2022 at about 6.30 p.m. while he was returning towards his village Kurkheda, on the way the fuel in his motorcycle ran out,

therefore, he was waiting for somebody to bring the fuel. At the relevant time, he heard the noise of quarrel between some persons near Goshala, therefore, he went near Goshala and witnessed the present applicant along with other co-accused assaulting one person working in the Goshala. As he went to intervene he was assaulted with knife and stone by the co-accused while the applicant threw stone on his cheek. Further, the applicant has also caused injury to the informant with the help of wheel disk of car. It is further alleged that the present applicant along with others have also committed robbery by snatching Rs.11,000/- from the pocket of the informant. On the basis of said report, the police have registered the crime against the present applicant.

4. At the outset, the learned counsel appearing for the applicant raises two grounds. Firstly, this Court, by its order dated 16/01/2024, has granted bail to two applicants, (i) Mukesh s/o Bhanudas Karade in Criminal Application [B.A.] No.255/2023 and (ii) Nikesh @ Nikku Chagan Meshram in Criminal Application [B.A.] No.683/2023, and accordingly, he submits that the applicant also deserve to be granted bail on the ground of parity. He further submits that apart from the merits of the case, the applicant also deserves to

be granted bail on the ground of “delay in trial” as the applicant is arrested on 02/06/2022. He submits that, till today, even the charges are not framed and, therefore, he submits that considering the long incarceration, the applicant deserves to be granted bail, as he is in jail for more than three years and nine months.

5. On the other hand, the learned A.P.P. concedes to this fact and submits that this Court has granted bail to two accused persons, namely, Mukesh s/o Bhaudas Karade and Nikesh @ Nikku Chagan Meshram. The present applicant is also similarly situated. The only difference is that the applicant has caused injury on the informant with the help of wheel disk of car, which is grievous in nature. She further submits that Rs.11,000/- was stolen from the pocket of the informant and there are antecedents against the applicant. No doubt, the applicant is in jail since 02/06/2022, however, considering the serious nature of allegations, the applicant does not deserve to be granted bail.

6. I have considered the rival submissions. Admittedly, while granting bail to two accused persons, Mukesh s/o Bhaudas Karade and Nikesh @ Nikku Chagan Meshram, this Court has scanned the material in detail. It appears that the injuries sustained by the informant are not life threatening

injuries, though it is grievous. The injured is already discharged from the hospital. It further appears that the role played by one of the accused, Nikesh @ Nikku Chagan Meshram, is similar to the present applicant. The reasons which are given in those applications while granting bail to two co-accused, they would be applicable to the present application also.

7. Apart from this, it is further to be noted that the applicant is behind bars since 02/06/2022. Therefore, even on ground of delay the applicant deserves bail.

8. The Hon'ble Supreme Court in the case of ***Javed Gulam Nabi Shaikh VS State of Maharashtra and Another, (2024) 9 SCC 813***; has in para no.17 held as under:

“17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

Further in case of ***Sheikh Javed Iqbal VS State of Uttar Pradesh, (2024) 8 SCC 293***; it has been held in para no.42, by the Supreme Court as under :

“42. This Court has, time and again, emphasized that right to life and personal liberty enshrined Under Article 21 of the Constitution of India is overarching and sacrosanct. A constitutional court cannot be restrained from granting bail to an Accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the Accused-undertrial Under Article 21 of the Constitution of India has been infringed. In that event, such statutory restrictions would not come in the way. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional court has to lean in favour of constitutionalism and the Rule of law of which liberty is an intrinsic part. In the given facts of a particular case, a constitutional court may decline to grant bail. But It would be very wrong to say that under a particular statute, bail cannot be granted. It would run counter to the very grain of our constitutional jurisprudence. In any view of the matter, K.A. Najeeb (supra) being rendered by a three Judge Bench is binding on a Bench of two Judges like us.”

Even in the recent judgment in case of *Anoop Singh .vrs. U.T. of J and K (SLP (Cri) No.1398/2026)* vide order dated 03/02/2026 has in paragraph no.8 held as under :

“8. The report is extremely disturbing. The report highlights the sorry state of affairs at the end of the prosecuting agency. We are at pains to note that in last 7 years, the prosecution has been able to examine only 7 witnesses. Prosecution still intends to examine 17 more witnesses. We wonder who are these 17 witnesses who are yet to be examined and if not examined, what would be the adverse effect

on the case of the prosecution. However, the most unfortunate part of the report of the Trial Court is that past 82 hearings, not a single witness has been examined.”

9. Considering the above exposition of law and the fact that the applicant is behind bars since 02/06/2022 and further the charges are yet to be framed, I am inclined to grant bail by imposing stringent conditions. Hence, the following order:-

ORDER

(i) The Criminal Application is **allowed;**

(ii) The applicant/accused (Arbazkha S/o Ajharkha Pathan) be released on regular bail in connection with Crime No.87/2022 for the offence punishable under Sections 307, 395, 147, 148, 149 and 323 of the Indian Penal Code, 1860, read with Sections 4 and 25 of the Indian Arms Act, 1959, Section 135 of the Maharashtra Police Act, 1951, and Sections 3(1)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act, 1999, on his furnishing a P.R. bond of Rs.25,000/- (Twenty Five Thousand Rupees) with one solvent surety in the like amount;

(iii) The accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts

of the case, as also shall not tamper with the evidence;

(iv) The accused shall provide his residential address and cell number to Police Station concerned and shall not change his place of residence without prior intimation to the Investigating Agency;

(v) The accused shall attend each and every date of trial regularly. If he fails to attend the trial for two consecutive dates, or fails to comply with the aforesaid conditions, his default would entail the State to ask for cancellation of bail or even trial Court can *suo moto* take cognizance of this and cancel the bail;

(vi) The applicant shall not indulge in similar types of activities;

(vii) Pending Misc. Application(s), if any, also stand disposed of.

[M.M. NERLIKAR, J]