

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 497/2026

(Sk. Javed Sk. Shakil Vs. 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. S. V. Sirpurkar, Advocate for applicant.
Mr. A. A. Madiwale, APP for non-applicant/State.

CORAM: M. M. NERLIKAR, J.

DATED : 05/05/2026.

Heard.

2. By this application, the applicant is seeking bail in connection with Crime No.601/2023 registered with Police Station Khadan, Akola for the offences punishable under Sections 302, 323, 324, 504, 34 of the Indian Penal Code read with Sections 4, 25 of the Arms Act.

3. In short the case of the prosecution is that, first information report was lodged by one Shabnam Parveen on 21/10/2023 alleging that there was ongoing family dispute between her sister Tabsum and her husband Hakim Khan and Usman Khan therefore since last one month, she was residing with her mother Shamshadbi Sk. Rafique and her 4 children were residing with her husband Hakim Khan. On 21/10/2023 the applicant abused the son of the

informant namely Arman, which led to a quarrel between the two families on mobile phone. At 6.00 p.m. Hakim Khan, her Sister Asma Parveen and the applicant came to the house of the informant and picked up a quarrel with her mother Shamshadbi, wherein the mother was stabbed with knife by Javed due to which she succumbed to injuries.

4. The applicant has raised the ground of delay in trial. The learned counsel for the applicant submits that the applicant is in jail for more than two years and seven months. He submits that Article 21 of the Constitution of India guarantees every accused person the right of speedy trial. Though two years and seven months have lapsed, however, out of 58 dates, for about 40 dates, he was not produced from the jail. Till today, the matter is pending for production of the Muddemal property. He submits that there are almost 25 witnesses cited in the charge-sheet and therefore, the trial is not likely to conclude in the near future, thereby violating fundamental right guaranteed under Article 21 of the Constitution of India, therefore the applicant be released on bail.

5. On the other hand, the learned APP has drawn my attention to the order of the Trial Court. The Trial Court has considered this argument and stated that charge could not be framed for want of presence of all accused and when the accused were called for framing of charge, the Advocate of the accused sought adjournment by making oral request, therefore the accused persons are responsible for causing delay in trial. He further submits that this Court was not inclined to grant bail to the applicant and therefore, the application was withdrawn on 07/10/2024. He also submits that there are criminal antecedents of the applicant. On this, the learned counsel for the applicant submits that he has been acquitted from all those cases, therefore he has stated in his application that he is having clean antecedents. The learned APP submits that the applicant cannot be released on bail as the offence is grave and serious, the applicant is the main accused who stabbed the deceased with the help of knife.

6. I have considered the rival submissions. Before going to the issue of delay in trial, it would be useful to refer to the judgment of the Supreme Court which reads as

under:-

7. 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.”

8. 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.”

9. 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.”

10. In case **Vaibhav Singh Vs. State of Uttar Pradesh, Special Leave to Appeal (Cri). No. 7416/2026** decided on 29/04/2026, the Supreme Court has observed in paragraph No.12 which reproduced as under:-

“12. In many of our Judgments and on many occasions, we have said in so many words that howsoever grave the crime may be, but if the accused is denied his right of speedy trial and is languishing in jail for years together and for no fault on his part, he cannot be kept

in jail for indefinite period.”

11. It is not in dispute that the first information report was registered on 21/10/2023. The applicant was arrested on 22/10/2023. The charge sheet was filed on 16/01/2024. The charges are framed on 30/03/2026. It appears from the Roznama that out of 58 dates the applicant was not produced before the Court for about 40 dates. The status report of the Trial Court is received. From the status report, it appears that the prosecution has not produced the Muddemal property, therefore time to time, the matter was adjourned. It is also necessary to mention at this juncture that in the charge-sheet, total 25 witnesses are shown. Under such circumstances, the accused cannot be incarcerated for indefinite period. As observed by the Supreme Court in the above referred cases that if there is delay in trial, the accused would be entitled for bail. The observation of the Trial Court that the adjournment was granted on the oral request of the advocate for accused cannot be accepted.

12. Considering the above factual background and the fact that the applicant is behind bars since two years and seven months and till today the trial has not commenced

and one does not know when the trial will be concluded, in this view of the matter, I am inclined to grant bail, hence the following order:-

ORDER

- (i) Criminal application is allowed and disposed of.
- (ii) The applicant/accused Sk. Javed Sk. Shakil be released on bail in connection with Crime No.601/2023 registered with Police Station Khadan, Akola for the offences punishable under Sections 302, 323, 324, 504, 34 of the Indian Penal Code read with Sections 4, 25 of the Arms Act on his furnishing P.R. Bond of Rs. 25,000/- with one 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 concerned Police Station and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- (v) The applicant/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, the bail would be treated as cancelled.

(M. M. NERLIKAR, J.)