



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous 2nd Bail Application No. 4520/2025

Smt. Mariya Spouse/o Mustanseer Bohra, Aged About 32 Years,
R/o Near Saifi Masjid, Salumbar, At Present R/o 28, Matawari
Near Mewar Hospital Police Station Sukher, Dist. Udaipur
(Presently Lodged At Dist. Jail Udaipur)

----Petitioner

Versus

State Of Rajasthan, Through Pp

----Respondent

For Petitioner(s) : Mr. Karan Singh Rathore
Mr. Shreyansh Ramdev

For Respondent(s) : Mr. S.S. Rahore, Dy.G.A.

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

04/08/2025

1. The jurisdiction of this court has been invoked by way of filing an application under Section 439 CrPC at the instance of accused-petitioner. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	677/2023
2.	Concerned Police Station	Ambamata
3.	District	Udaipur
4.	Offences alleged in the FIR	Section 302 & 323 of the IPC
5.	Offences added, if any	Sections 449, 394, 380, 436 and 201 of the IPC
6.	Date of passing of impugned order	04.03.2025





2. Briefly stated that facts of the case are that on 27.10.2023, upon receiving credible information, I.C. Police Station Officer Mr. Ishak Mohammad, S.U.N., proceeded to the spot where the deceased, Mrs. Hussaina and Mrs. Sara Bai, were found. The crime scene was secured, and both bodies were shifted to the mortuary at MBGH for further procedures.

2.1. On the following day, 28.10.2023, the officer visited the hospital along with the police team. At the MBGH mortuary, applicant Dr. Shabbir submitted a written report, stating that on 27.10.2023 at approximately 7:30 p.m., he was informed that Mrs. Hussaina Bai and her sister, Mrs. Sara Bai, residing with her, had allegedly been murdered. He immediately rushed to the scene, where a crowd had already gathered. Among them were Mrs. Ramkanya and Mr. Veniram employees at Hussaina Bai's residence along with their children. They informed that they had returned from their village around 5:30 p.m. after Navratri festivities. Upon cleaning the premises, they found the main door unlocked from inside. On proceeding upstairs, they discovered the lifeless bodies of Hussaina Bai and Sara Bai lying on the floor of the front room, which had access from both sides. They raised an alarm, which attracted neighbouring residents and later the police. The police noted that both deceased had visible injuries specifically, head trauma with profuse bleeding, protruding tongue in the case of Sara Bai, and lacerations on her left hand. Hussaina Bai had an injury on her chest with some skin avulsed. Based on the report, a case was registered as FIR No. 677/2023 at Police Station Ambamata under Sections 302 and 323 IPC.





2.2. Subsequently, during investigation, the present applicant/accused, Maria, was arrested on 02.11.2023. Upon completion of investigation, a charge sheet was filed before the competent court. The case was later committed and transferred to the trial Court. After hearing arguments on charge, the accused was charged under Sections 449, 302, 394, 380, 436, and 201 IPC. The accused pleaded not guilty and sought trial. The case is presently at the stage of prosecution evidence. Her first and second bail applications being SBCRLMB No.14708/2024 were dismissed by this Court vide order dated 19.12.2024. Hence the instant bail application.

3. It is contended on behalf of the accused-petitioner that no case for the alleged offences is made out against her and her incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioner and she has been made an accused based on conjectures and surmises.

4. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor opposes the bail application and submits that the present case is not fit for enlargement of accused on bail.

5. I have heard and considered the submissions made by both the parties and perused the material available on record.

5.1. A meticulous and comprehensive scrutiny of the case record unequivocally reveals that the petitioner has been subjected to judicial custody for a prolonged period nearing two years. This detention, far exceeding a transient or routine duration, imposes



an onerous burden not only on the petitioner's liberty but also on her familial responsibilities. The petitioner is a young woman who, notwithstanding the severe constraints of incarceration, bears the substantial obligation of nurturing and providing care for her five year old child. Her plight is exacerbated by a stark and distressing absence of any immediate familial support system. Both her father-in-law and mother-in-law have tragically passed away, thereby eliminating any potential sources of familial aid or supervision within her household. Compounding this situation is the fact that her child currently resides with her maternal grandmother, geographically removed from the petitioner, which intensifies the emotional strain and logistical difficulties she endures during this prolonged period of detention.

5.2. The Court has taken note of the sworn affidavit filed by the mother of the petitioner, who has earnestly attested to the severe personal and familial hardships faced by the petitioner. It is further recorded that the deponent is an elderly woman, burdened with the care of her husband, who is seriously afflicted with cancer. She is compelled to undertake frequent and taxing journeys between Ahmedabad and Udaipur for his ongoing medical treatment. This unavoidable responsibility substantially diminishes her ability to provide the necessary care and supervision for the petitioner's young child. Consequently, the petitioner's family lacks any effective support system to ensure the child's welfare during the petitioner's continued period of incarceration, thereby compounding the petitioner's already vulnerable and distressing situation. It is imperative to underscore that she possesses a





pristine criminal record, with no prior antecedents or criminal history that could impugn her integrity, reliability, or the trustworthiness requisite for judicial indulgence.

5.3. Critically, the criminal trial against the petitioner remains inchoate and far from resolution. To date, only a limited segment of the prosecution's witnesses have been examined, leaving a substantial corpus of evidentiary material yet to be adduced. The languid and protracted pace of the trial, coupled with the considerable volume of testimony and documentation still to be recorded, starkly underscores the improbability of an imminent or expeditious conclusion. Such an extended pre-trial incarceration, absent any definitive determination of guilt, precipitates serious constitutional and procedural concerns. This state of affairs gravely impinges upon the petitioner's fundamental rights, including the right to a fair and speedy trial enshrined under Article 21 of the Constitution, which guarantees protection of personal liberty and due process.

5.4. At this interlocutory juncture, a pivotal legal issue warrants careful contemplation, though it remains inappropriate to definitively adjudicate it at this stage. The precise legal characterization of the alleged offence is presently ambiguous and necessitates further factual and legal determination. In the present case, there is an absence of any direct eyewitness testimony implicating the petitioner. The prosecution's case predominantly hinges upon circumstantial evidence, which raises a mere suspicion or doubt regarding the petitioner's involvement in the





alleged offence. Crucially, there is no evidence on record establishing that any individual directly observed the petitioner committing the crime, which is the principal fact referred to in legal parlance as the *factum probandum* that must be proved beyond reasonable doubt.

5.5. While there exist certain relevant facts (*facta probantia*) on the record that tend to support the prosecution's narrative, it is imperative that the chain of these evidentiary facts be so complete, consistent, and unbroken as to exclude all other reasonable hypotheses except the guilt of the accused. The foundational principle governing circumstantial evidence mandates that the court must appraise the totality of relative and relevant circumstances with rigorous scrutiny. The circumstances presented by the prosecution must point unerringly and conclusively toward the guilt of the accused; they should be definite in their tendency and wholly conclusive in nature. Moreover, each circumstance must independently establish the accused's culpability to the extent that no other plausible inference can be drawn.

5.6. In criminal jurisprudence, the prosecution bears the onus to establish the *factum probandum* the principal fact at issue, namely, the petitioner's culpability. To discharge this burden, the prosecution must adduce *facta probantia*, which are the evidentiary facts or circumstances that tend to prove or support the principal fact.

5.7. It is a settled proposition of law that in cases based solely on circumstantial evidence, the chain of circumstances must be





complete, cogent, and convincing. Each individual circumstance relied upon must be independently established by credible evidence. More importantly, when all such circumstances are taken together, they must form an unbroken chain which leads to the singular conclusion that it was the accused and no one else who committed the offence. If there exists even the slightest possibility of any other hypothesis consistent with the innocence of the accused, then the benefit of doubt must necessarily go to the accused.

5.8. The Hon'ble Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116]*** laid down the five golden principles, also known as the "***panchsheel***," for appreciation of circumstantial evidence. These are:

1. *The circumstances from which the conclusion of guilt is to be drawn must be fully established;*
2. *The facts so established should be consistent only with the hypothesis of the guilt of the accused;*
3. *The circumstances should be of a conclusive nature and tendency;*
4. *They should exclude every possible hypothesis except the one to be proved;*
5. *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused.*

Applying these principles to the present case, it becomes apparent that the evidentiary material on record, even if taken at face value, falls short of meeting the stringent requirements laid down for conviction based solely on circumstantial evidence. The





chain of circumstances, as projected by the prosecution, appears to be incomplete and disjointed, leaving open various plausible hypotheses other than the guilt of the petitioner.

6. At this stage, this Court refrains from expressing any conclusive opinion on the merits of the prosecution's case. However, it finds that the absence of direct evidence and the nature of circumstantial evidence presented raise triable issues which remain to be tested during the course of trial. The observations made herein are therefore limited to the purpose of deciding the present application and shall not prejudice the rights of either party during trial. The petitioner is at liberty to raise all these legal and factual contentions before the learned Trial Court in accordance with law.

7. The legal principles governing the grant of bail in non-bailable offences are comprehensively codified in Section 437 of the Code of Criminal Procedure, which, following legislative reforms, has been subsumed under Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Ordinarily, the statutory framework mandates that bail should not be granted where the accused faces charges punishable by death or life imprisonment, and where there exist reasonable grounds to believe in their guilt. Nevertheless, the statute prudently incorporates a critical proviso that confers a beneficial and compassionate discretion favoring vulnerable categories of persons, including women, children, and infirm individuals. The legislative intent underlying this proviso is manifest: to shield such vulnerable classes from the onerous and





potentially prejudicial rigours of pre-trial detention, except in cases where compelling and overriding justification exists.

7.1. Judicial interpretation and constitutional exegesis, particularly as articulated by the Hon'ble Supreme Court, have elucidated that the permissive term "may," when used in conjunction with a statutory duty, ought to be construed as "shall." This interpretative principle ensures that judicial discretion is exercised judiciously and mandatorily, rather than arbitrarily or capriciously. Such discretion must invariably be exercised in strict conformity with constitutional principles of fairness, equity, and reasonableness. Further, the presumption of innocence a foundational pillar of criminal jurisprudence mandates that every accused must be treated as innocent until proven guilty beyond reasonable doubt. Prolonged detention in the absence of conviction constitutes a manifest infringement upon the fundamental right to personal liberty enshrined in Article 21 of the Constitution, thereby necessitating rigorous judicial scrutiny and intervention.

7.2. A paramount consideration in adjudicating bail applications is the appraisal of any potential risk that may be posed by the accused's release. Such risks typically encompass the likelihood of absconding, the possibility of tampering with evidence, or the danger of influencing or intimidating witnesses. In the present matter, the petitioner a young mother burdened with the care of a young child and bereft of any familial caretakers due to the demise of her in-laws and she is not having prior criminal antecedents. The record is devoid of any material or credible





evidence suggesting that she poses any such threat to the trial process. Furthermore, several prosecution witnesses have already been examined, substantially diminishing any realistic possibility of interference with the judicial proceedings.

7.3. Taking into account the petitioner's youth, lack of socio-political influence or power, and the absence of any demonstrated intent or action to obstruct the administration of justice, it would be manifestly unjust and disproportionately punitive to continue her incarceration based solely on the gravity of the charges leveled against her. This consideration acquires even greater significance given that the trial is anticipated to endure over a protracted period, thereby amplifying the hardship and injustice caused by extended detention without resolution.

8. In summation, having regard to the totality of circumstances particularly the petitioner's protracted pre-trial detention, the absence of cogent and convincing grounds indicating any threat to the integrity of the trial, the arguable and debatable classification of the offence, and the petitioner's inherently vulnerable status as a woman is profoundly exacerbated by the heartrending reality of her enforced separation from her young, five years old son. This innocent child, in the crucial formative years of his development, is deprived of the essential care, guidance, and emotional sustenance that only a mother can provide. The petitioner, in turn, is grievously bereft of the invaluable opportunity to fulfill her natural and fundamental role as a mother the nurturing, upbringing, and intimate bonding with her child.





8.1 Such involuntary deprivation not only inflicts severe emotional and psychological distress upon the petitioner but also undermines the child's welfare and well-being. The maternal bond, universally recognized as vital to the child's holistic growth, remains disrupted by circumstances beyond their control. This separation, therefore, transcends mere physical distance, amounting to a profound denial of the petitioner's elemental right to motherhood and care giving, thereby compounding her already precarious and vulnerable predicament. Thus, this Court is firmly persuaded that continued incarceration would be neither legally justified nor equitable. The paramount purpose of bail is not to operate as a mechanism of pre-trial punishment, but rather to ensure the accused's presence during trial proceedings. Where such assurance can be reasonably and satisfactorily secured without recourse to incarceration, the denial of bail becomes legally untenable and constitutionally impermissible.

9. Accordingly, the instant bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner as named in the cause title shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

51-Mamta/-

