

MHTH010055352024

**ORDER BELOW EXH.3 IN**
SESSIONS CASE NO.313/2024

Dharmendra Mourya and 3 Ors
..V/s..
The State of Maharashtra

(Navghar Police station C.R. No.I-99/2024)

1] This is an application filed under Section 483 of B.N.S.S. for regular bail in Crime No. I-99/2024 registered with Navghar Police station, Dist. Thane, for the offence punishable under Sections 302, 201, 143, 147, 148, 149 of Indian Penal Code.

2] In short it is the case of the prosecution that, informant – Niyaj Ahmad Chaudhary has lodged F.I.R. of incident. According to him, on 05.02.2024 at about 10.00 am in public toilet near Sadharam Hotel, Bhayander (E) dead body of unknown person was found. During inquiry and investigation it was transpired that applicants/accused and co-accused assaulted deceased by means of wooden rod on various parts of his body and committed his murder by suspecting him to be a thief and thereafter, they have thrown said dead body in the public toilet with a view to cause disappearance of evidence.

3] In this application, it is averred by the applicants/accused that, they are innocent and not committed any offence. They are falsely implicated in the crime. They are arrested on 06.02.2024. However, while arresting them, the I.O. has not complied the mandatory provisions of Section 50 of Cr.P.C. and thereby they are entitled to be released on bail. They have fixed place of residence and possessing immovable property. They will not tamper the prosecution witnesses and evidence. They are ready to co-operate investigating machinery, if released on regular bail.

4] I.O. and prosecution have filed their say vide Exh.04 and 05. It is contended that, the offence is serious. The weapons used in commission of the crime are seized. There is CCTV footage which shows involvement of applicants/accused while commission of the offence. One of the associate of the applicants/accused is absconding. If, the applicants/accused are released on regular bail then they may tamper with prosecution evidence and witnesses. Their possibility of fleeing away cannot be ruled out. Hence, application be rejected.

5] Heard both sides.

6] During the course of arguments the learned defence counsel has argued only one ground i.e. violation of Article 22(1) of Constitution of India and non-compliance of Section 50 of

Cr.P.C. while arresting the applicants/accused. He has left remaining grounds. Hence, I am deciding the bail application by taking into consideration said grounds argued by the defence.

7] The learned Advocate for the applicants/accused has relied upon decision of Hon'ble Apex Court in the case of ***Vihaan Kumar V/s. State of Haryana and Anr.*** in Criminal Appeal No. of 2025 (Arising out of Special Leave Petition (Crl.) No.13320 of 2024) decided on 07.02.2025, wherein the Hon'ble Apex Court in para 21 of the judgment has concluded as under :

“a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);

b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the

requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of chargesheet will not validate a breach of constitutional mandate under Article 22(1);

e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) and other mandatory safeguards has been made; and

f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.”

8] The learned defence Counsel also relied upon decision of Hon’ble Apex Court in the case of ***Prabir Purkayastha V/s. State (NCT of Delhi)***, [2024 ALL SCR (Cri) 1132] wherein it was held that the “*grounds of arrest*” would invariably be personal to the accused and cannot be equated with the “*reasons of arrest*”.

9] The learned defence Counsel also relied upon decision of Hon’ble Bombay High Court in the case of ***Mahesh Pandurang Naik V/s. State of Maharashtra and Anr.***, [AIROnline 2024 BOM 1240] and in the case of ***Faisal Ashraf Tole V/s. The State of Maharashtra and Anr.*** in Writ Petition No.3602 of 2024 decided

on 26.11.2024 wherein accused has been released on bail in violation of Article 22(1) of Constitution of India and non-compliance of Section 50 of Cr.P.C.

10] Learned APP has relied upon decision of Hon'ble Bombay High Court Bench at Nagpur in the case of ***Yogesh Ramesh Tonde V/s. State of Maharashtra [2025 DGLS (Bom.) 1150]*** wherein bail application came to be rejected by holding compliance of Section 50 of Cr.P.C. and Article 22(1) of the Constitution of India.

11] The learned A.P.P. has further relied upon decision of Hon'ble Punjab and Haryana High Court at Chandigarh in the case of ***Ravinder @ Tanni @ Taran V/s. State of Haryana, [CRM-M-62038-2024]*** wherein decision of Hon'ble Apex Court in the Case of Pankaj Bansal has been applied prospectively i.e. after 03.10.2023.

12] The learned A.P.P. also relied upon decision of Hon'ble Apex Court in the case of ***Mihir Rajesh Shah V/s. State of Maharashtra*** and in the case of ***State of Karnataka V/s. Hemnath Datta***, wherein final decision has been reserved.

13] During the course of arguments I.O. has produced

copy of case diary, wherein he has noted that the information of the arrest of accused no.1 to 3 has been given to transport owner – Anil Parab and of accused no.4 to his father Ramsevak on phone. He has also produced the copies of the extract of arrest register of accused. These documents are silent about communication of the grounds of arrest to accused as required under Section 50 of Cr.P.C.

14] The say filed by I.O. and prosecution vide Exh.4 and 5 is also silent about compliance of Section 50 of Cr.P.C. and Article 22(1) of the Constitution of India while arresting the accused.

15] Considering the arguments advanced on behalf of both sides and case-laws (supra) it is noted that the Hon'ble Apex Court in the case of ***Prabir Purkayastha*** and in the case of ***Vihaan Kumar*** held that the grounds of arrest have to be communicated in writing to accused while arresting them. However, in the present case the I.O. has not followed the mandatory provisions of Section 50 of Cr.P.C. and Article 22(1) of the Constitution of India while arresting the accused. Mere entry in the case diary and the arrest register are not sufficient to prove such compliance. Whereas, these documents clearly shows that I.O. has given information of arrest on phone to transport owner and father of accused no.4. The I.O. has not communicated the grounds of arrest in writing to accused no.1 to 4 while arresting them.

16] Thus, in view of ratio laid down by the Hon'ble Apex Court (supra), the applicants/accused are entitled to enlarge on bail due to violation of Article 22(1) of the Constitution of India and non-compliance of Section 50 of Cr.P.C. However, the accused no.1 to 4 are residents of Uttar Pradesh State. For securing their presence during the trial, it is necessary to obtain local surety from them while releasing on bail. Hence, I proceed to pass following order :

ORDER

- 1) Application is allowed.
- 2) Applicants/accused – **(1) Dharmendra Buddhisagar Mourya, (2) Tulsiram Bhagwati Yadav, (3) Pradipkumar Santosh Yadav and (4) Girjesh Ramsevak Paswan** arrested in connection with Crime No. I-99/2024 registered with Navghar Police station, Dist. Thane, for the offence punishable under Sections 302, 201, 143, 147, 148, 149 of Indian Penal Code, are hereby released on regular bail after furnishing PR bond of Rs.1,00,000/- and one or two local solvent sureties of like amount by each.
- 3) They are directed not to tamper with prosecution evidence and witnesses in any manner, during pendency of the trial.
- 4) They are further directed to remain present before the court during the course of trial on each date unless their presence has been exempted by the court.

Date :- 30.06.2025

sd/-
[V. G. Mohite]
Additional Sessions Judge,
Thane.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order/Judgment are same word to word as per the original Order/Judgment.

Name of Stenographer	Devendra Ramesh Prabhune (Grade-I)
Name of Court	Additional Sessions Judge, Thane
Date of order/Judgment	30.06.2025
Date of order/judgment signed by presiding officer.	30.06.2025
Judgment/Order uploaded on	01.07.2025