

MHTH060009882026



Sessions Case No.145/2026 (Exh.32)

The State of Maharashtra.
(Kalyan Taluka Police Station)V/s.
Mohan Kachru Gore**ORDER BELOW EXH.32**

This is an application filed under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023 for the offence punishable under sections 103(1), 189(2), 191(2), 191(3), 190, 61(2), 352, 115(2), 249 of the Bharatiya Nyaya Sanhita and under Section 37(1), 37(3), 135 of the Maharashtra Police Act, vide CR No.689/2025, registered at Kalyan Taluka Police Station. The maximum punishment is imprisonment for life. The applicant is arrested on 1/12/2025. He is behind the bars for more than 7 months. Investigation is complete and charge-sheet is filed. Applicant has not filed affidavit as per directions in ***Zeba Khan Versus State of UP, Criminal Appeal No.825/2026.***

2) Learned advocate for the applicant has argued that this is third bail applicant. First bail application was filed before the charge-sheet. The second bail application was filed after filing of the charge-sheet which is decided on 16/3/2026. It is argued that thereafter charge is framed. However, no witnesses are examined. It is argued that after second bail application of the applicant was rejected, the Predecessor of this Court has granted bail to two co-accused Ashish and Vishal. It is argued that the Predecessor of this Court has observed that it will take time to conclude the trial, and therefore, bail is granted. It is argued that till date muddemal is not received. Two co-accused are released on bail. There is not a single complaint of breach of any of the conditions. It is argued that the applicant is

arrested on 1/12/2025. Ld. Advocate has referred to the arrest panchanama and argued that time is not mentioned in it. He has referred to the notice under Sections 47, 48 of the BNSS pointing that names of co-accused are mentioned wrong.

3) It is argued that the incident mentioned in this FIR is related to one prior incident which occurred on same day at about 3.45 p.m. It is argued that there was a bullock cart race. Witness Ajinkya had gone to see it. At about 3.00 p.m. there was a quarrel between Ajinkya and co-accused Vishal, Mirkute, Jitendra, Rohidas Kembari and Pratik Chaudhary. It is argued that as per the prosecution case, after this incident witness Ajinkya called deceased Kiran. It is argued that in the FIR Ajinkya did not mention about presence of Kiran. It is argued that one another CR is registered regarding conducting bullock cart race without seeking permission. However, nobody is arrested in it.

4) It is argued that after the incident at bullock cart race place allegedly deceased Kiran came to Sai Milan Hotel, Murbad. As per the prosecution case, at about 7.00 p.m. when deceased Kiran was at Sai Milan Hotel, co-accused Kalpesh, Suresh, Kamlakar Tembhe, Vishal Mirkute and other 8-10 people came there forming an unlawful assembly. It is argued that as per the prosecution case, all of them assaulted Kiran and Kiran succumbed to the injury and he was declared dead at the arrival to the hospital. Ld. Advocate for the applicant has referred to the postmortem notes and argued that a death is caused due to injury to the vital part of the body. The injury is of stabbing. It is argued that 4 injuries are marked and they are attributed to specific accused persons. It is argued that though prosecution alleges that there were 8-10 unknown people, no specific

role is attributed to them.

5) Ld. Advocate has referred to the test identification parade and argued that even though there were independent witnesses who had seen the incident, the test identification parade was not conducted through them. On the contrary, it is conducted through the informant who is an interested witness. Ld. Advocate for the applicant has vehemently argued that as per the prosecution case, alleged incident allegedly occurred in a store room as deceased ran towards it. It is argued that the owner of the hotel had locked herself in a room. The informant and Dilip Shelar had not run behind deceased Kiran. Thus, there is no eye witness to the actual incident.

6) It is argued that the alleged incident is a result of previous incident wherein witness Ajinkya was beaten. However, his statement is recorded on 4/12/2025 after considerable delay. It is argued that prosecution relied on CDR and SDR. However, in the rural area number of towers are less. Therefore, it is but natural that the tower location of all the accused would be in the same vicinity. It is argued that the test identification parade is clouded with doubts as prior to it the accused were being brought to the Court, no precaution was taken to cover their faces. Therefore, the witnesses had an opportunity to see them.

7) It is argued that nothing is recovered at the instance of present applicant. It is argued that statements under Section 27 of the Evidence Act are recorded. However, the co-accused has not named the present applicant. It is argued that after the test identification parade, supplementary statement of the witnesses are recorded. They are stereo typed. It is argued that as per the prosecution case, deceased Kiran was present at the place of bullock cart race. It is

argued that in such circumstances, considering the distance upto Sai Milan Hotel, there is a doubt regarding his presence as alleged by witness Ajinkya. It is argued that now investigation is over and the charge-sheet is filed. It will take time to conclude the trial. Applicant is ready to furnish surety and abide by terms and conditions. Hence, application be allowed.

8) Ld. Advocate for the applicant has relied on following case laws :

- (i) ***Mihir Rajesh Shah Versus State of Maharashtra and another, Criminal Appeal No. 2195 of 2025.***
- (ii) ***Vihaan Kumar Versus State of Haryana & Anr., Special Leave Petition (Cri.) No. 13320 of 2024.***
- (iii) ***Sabnam Suleman Ansari Versus The State of Maharashtra, Criminal Bail Application No. 1198 of 2025.***
- (iv) ***Riya Arvind Barde Versus The State of Maharashtra and Anr., Writ Petition (Stamp) No. 23260 of 2024.***
- (v) ***Dilip K. Basu Versus State of West Bengal & Ors., CRL. M.P No. 16086 of 1997.***

9) Ld. APP has argued that the alleged incident allegedly occurred in the presence of witnesses. There are more than 7-8 eye witnesses. It is argued that in the previous bail application, all the grounds are considered by the Court. There is no change in circumstances. The witnesses have identified the applicant in the test identification parade. The weapons are recovered from the co-accused. They were all forming unlawful assembly and being members of unlawful assembly are responsible for the alleged crime. It is argued that offence under Section 103 of the BNS is registered against the applicant. The punishment is capital punishment or

imprisonment for life. It is argued that active participation of the applicant is seen. It is argued that the parity is not applicable to any of the applicant. It is argued that co-accused are released on bail because they had not participated in the offence. It is argued that their only role is after the alleged incident they provided the vehicles or concealed the vehicles. It is argued that the muddemal is received. The prosecution is ready to conduct the trial. The offence is very serious. Hence, application be rejected.

10) Heard both the learned advocates at length. Perused application, say of informant and the charge-sheet.

11) On perusal of the FIR, prima facie it is seen that FIR is given by informant who is an eye witness to the incident. The sum and substance of the FIR is, on 28/11/2025 there was a bullock cart race at Umberwade. At the time of race a quarrel occurred between witness Ajinkya and co-accused Vishal Mirkute and his friends. He informed the deceased. Till the deceased went to the spot, everyone had disbursed. Thereafter, at about 7.00 p.m. deceased, the informant along with witnesses Ajinkya, Aakash and other eye witness Shelar were at Sai Milan Hotel. Witness Ajinkya saw Vishal Mirkute & his friends approaching towards the hotel. He alerted the deceased and himself ran away riding on the scooty along with witness Aakash. Prima facie, as per the FIR the informant has stated that a gang of 8-10 people along with Kalpesh, Suraj, Kamlakar, Vishal came to the hotel. The 4 accused named in the FIR were carrying weapons such as knife, sharp edge weapons, etc. They also used broken glasses of a bottle and wooden sticks. Prima facie, it is seen that they attacked deceased Kiran. The other people damaged the furniture in the hotel and were creating ruckus and terror.

12) Prima facie, it is seen that deceased Kiran tried to run inside the hotel and save himself. However, he was followed by 4 accused named in the FIR and was given various blows of sharp weapons as well as other weapons. Prima facie, it is seen that he was taken to the hospital, however, declared dead on arrival.

13) Prima facie, it is seen that the entire incident is witnessed by informant, another friend Dilip Shelar, the owner of the hotel, as well as, a waiter. Present applicant is one of those unknown people who were accompanying with the named co-accused. Prima facie, it is seen that the attack was directed upon the deceased only as he was the only person who got injured. Prima facie, it is seen that co-accused Suraj & Kalpesh have previous enmity with deceased Kiran Ghorad. Two previous incidents are mentioned by wife of deceased Kiran which had arose out of the civil contracts. Ld. Advocate for the applicant has argued that applicant is falsely implicated. He was not found present at the spot. His role is not specific. He is one of the unknown person mentioned in the FIR.

14) On perusal of the entire charge-sheet, prima facie, it is seen that initially only four people were named in the FIR. However, thereafter supplementary statement is given and other people are named. Applicant is one of them. Prima facie, it is seen that thereafter test identification parade was conducted and the eye witness identified present applicant as one of the people present at the spot and was active member of the unlawful assembly. The veracity of the test identification parade is questioned. It is argued that they are identified only by the interested witnesses, whereas, independent witnesses were also present. So far as CDR is concerned, it is argued that since there is one single tower, it is but natural that the location

will be found in the same area.

15) It would be pertinent to note here that whether test identification parade was conducted properly or whether it was merely a farce can be decided only at the time of trial. At the stage of bail, it is necessary to see the facts as they appear prima facie. Admittedly deceased was attacked and he succumbed to the injuries sustained by him in the attack by 4 accused named in the FIR and their friends who formed unlawful assembly, the common object of which was to cause hurt to the deceased. Prima facie, it is seen that the act is carried out and resulted in the death of injured Kiran Ghorad.

16) On perusal of the charge-sheet, prima facie, it is seen that after the quarrel at bullock cart race, with witness Ajinkya, accused Vishal collected 20-25 friends. Prima facie, it is seen that he knew exact location where he would find Ajinkya and may be deceased Kiran. Prima facie, it is seen that co-accused Kiran had reached to the bullock cart race, however, Vishal and his friends had already left. Prima facie, it is seen that co-accused Vishal and his friends came to hotel Sai Milan with common intention and clear object to cause harm. However, Ajinkya who after seeing the lot, carrying sticks and other weapons fled along with witness Aakash.

17) Prima facie, it is seen that after these people reached to the hotel, their intention was clear. Though informant Pondekar and witness Dilip Shelar were present, no one harmed them. They were left unscathed. Co-accused Vishal, Kamlakar, Kalpesh Rohane and Suraj Tamhane directly rushed to deceased Kiran. On perusal of the statement of wife of Kiran, it is seen that co-accused Suraj Tamhane and Kalpesh Rohane had old score to settle as they had previous

quarrel with deceased Kiran on civil contract. Prima facie, as per account of eye witnesses, co-accused Kamlakar Tembhe stabbed in the stomach, co-accused Vishal assaulted with weapon in his hand on the head, Kalpesh hit with a stick and broken bottle and Suraj stabbed in the back with sharp weapon to the deceased. Prima facie, it is seen that the injuries are to the vital part of body. The stabbing injuries punctured internal organs resulting in the heavy blood loss and puncture of the internal organs resulting in the death of Kiran.

18) Prima facie, it is seen that at the same time the others were creating havoc by breaking the furniture and windows of the hotel. Prima facie, it is seen everyone came with clear intention, common object and previous plan. The plan resulted into the death of Kiran Ghorad.

19) Ld. Advocate for the applicant argued that the death is caused due to the injuries inflicted by 4 accused. It is argued that role of present applicant is unclear and even if it is assumed that he was present and damaged the furniture, it is less grave. Prima facie, applicant is arraigned as an accused as a member of unlawful assembly.

20) Prima facie, the arguments of Ld. Advocate for the applicant regarding lesser role and false implication is not sustainable. Prima facie, there are more than 7 to 8 witnesses who have witnessed a group of 20-25 people creating havoc in the Sai Milan Hotel, the spot of incident and also leaving the spot. Prima facie, the deceased Kiran may have enmity towards accused to implicate them. But the informant Pondekar and Dilip Shelar have no such enmity to implicate unknown people. They have identified applicant in test identification parade.

21) Prima facie, there are other eye witnesses, too who have marked presence of the applicant as a member of unlawful assembly. Ld. Advocate for applicant has argued that though charge-sheet is filed, it may take time to conduct the trial. It would be pertinent to note that the charge is framed. The prosecution has moved application under Section 330 of the BNSS (Section 294 of the Cr.P.C.), the list of witnesses is provided. The prosecution is ready to conduct the trial.

22) Ld. Advocate for the applicant has argued regarding non-compliance/ no proper compliance of Sections 47 and 48 of the BNSS. On perusal of the record, it is seen that notice under Section 47 of the BNSS is given. The J.M.F.C. has counter signed it. The applicant was arrested on 1/12/2025. On the same day he was produced before the J.M.F.C. He is represented by his Advocate. There is no complaint of non-compliance of Section 47 of the BNSS. The second remand is on 6/12/2025. At this time a grievance was raised regarding Section 48 of the BNSS that time of arrest is not mentioned. The J.M.F.C. has dealt with this in the order. However, it makes clear that notice under Section 48 of the BNSS was given to present applicant. It is received by his relatives and has also reached to his Advocate.

23) It is further seen that two bail applications of present applicant are rejected. The first bail application was before the charge-sheet, wherein Ld. J.M.F.C. dealt with each and every case laws regarding non-compliance of Sections 47 and 48 of the BNSS and rejected the bail. Thereafter, in second bail application, the Sessions Court rejected the bail application giving specific reasons. In second bail application my Predecessor has specifically held that unless material witnesses are examined, it is not proper to consider

bail application. This order is not challenged before the Hon'ble High Court.

24) Prima facie, the argument is advanced that the co-accused are released considering that it will take time to conduct the trial and on the same ground, the applicant be released. As stated above, the prosecution has shown willingness to conduct the trial and the initial steps are also taken. Therefore, this argument is not sustainable. Prima facie, as such there is no change in circumstances to consider present bail application.

25) The offence is very serious. There are independent witnesses. All live in same area. The prosecution is ready to conduct trial. In such circumstances, it is not proper to consider the bail application at this stage. Hence, proceed to pass following order :

ORDER

- 1) Application Exh.32 is rejected.
- 2) Inform to concerned police station accordingly.
- 3) The soft copy of this order shall be sent to the applicant/accused by e-mail through the Jail Superintendent.

Kalyan.
Dt. 11/08/2026

(V. A. Patravale)
Additional Sessions Judge,
Kalyan.