

S.T. No. 11/2025.  
State.Vrs. Abdul Wasim +1.  
=====

**ORDER BELOW EX.5.**

[ Passed on 19th April, 2025 ]

Present application is placed on record by applicant/accused No.1 under section 483 of BNSS for grant of regular bail in connection with Crime No.274/2024 registered for the offence punishable under section 302 read with section 34 of Indian Penal Code. In the said matter investigation is completed. Charge sheet came to be filed and on that basis present case came to be registered which is pending on the file of this Court. Accused No.1 has been in jail since 09.07.2024. I have read the grounds of bail mentioned in the application.

2) Investigating Officer and learned A.P.P opposed the bail application by filing their common say Exh.6.

**Accusation :**

3) Complainant Police Head Constable Ashok Govindrao Marathe, B.No. 817 lodged report with PS.M.I.D.C. Akola on 04.07.2023. In the said report, he stated that on 30.06.2024, he was on duty with M.I.D.C. Police Station, Akola as Day Officer. At that time he received information from Police Chawkee Govt. Medical College, Akola that deceased Sana Fatema Abdul Wasim aged 11 years was brought by her relatives to Govt. Medical College, Akola for treatment. But, the Medical Officer on examination declared her as brought dead. On the basis of said information, merg No. 23/2024

under section 174 of Cr.P.C. came to be registered. Thereafter, lady police Head Constable Chhaya Rathod, B.No. 1764 did inquest panchnama in presence of two panchas. She then addressed letter to Medical Officer. Govt. Medical College, Akola and requested to do postmortem and to find out the probable reason of death. Thereafter, she received advance postmortem report in which cause of death is written as Asphyxia due to smothering, unnatural death.

4) Thereafter, Lady PI. Vaishali Mule, prepared spot panchanma in presence of two panchas. Thereafter, complainant did inquiry in Merg report. During the course of inquiry he came to know that on 29.06.2024, while the deceased was sleeping with his father, mother and brother, she felt pain in her stomach and she was feeling like omitting. On next day, i.e. on 30.06.2024, at about 6.00 a.m. deceased was taken to Dr. Ikhar, at Babhulgaon Jahangir. But doctor referred her to Civil Hospital, Akola. Accordingly, accused took deceased to civil Hospital, Akola at 7.30 a.m. Doctor examined deceased and declared her dead at 8.40 a.m. He further stated that in view of injuries mentioned in column No. 17 of postmortem examination report, it is revealed that some unknown person has committed her murder by smothering. Hence, the report.

**Submissions :-**

5) Learned advocate Mr. Dildar Khan appearing for the accused No.1 submits that accused has been in jail since 09.07.2024. He further submits that during the course of police custody remand, nothing has seized from the possession of the accused. In the entire

charge sheet no motive is attributed to the accused.

6) During the course of argument learned advocate for applicant/accused No.1 invited my attention towards the statements of witnesses namely Nasrim Parvin Abdul Shamim, Abdul Hakim and Husainabi. Taking this Court through the statements of aforesaid witnesses he tried to point out that aforesaid all the four witnesses are from relations of deceased and accused persons. However, they have specifically stated in their statement that they do not know the reason of death of deceased Sana Fatema and they do not have grudge against anybody for the death of Sana Fatema. Thus, he tried to submits that if the accused was real culprit, the aforesaid witnesses, who are from relations of deceased and accused would not have hesitated to attribute role to the present accused and another accused.

7) He further submits that in the entire charge sheet motive is not attributed to the accused persons. The case is based on circumstantial evidence. In the case based on circumstantial evidence, the motive plays important role and unless there is motive, accused cannot be connected with the crime.

8) Further he invited attention of this Court towards statement of Abdul Arhan, son of the present applicant. Statement of said Abdul Arhan has been recorded by Investigating Officer in question-answer form. Learned advocate for accused invited my attention particularly towards question No.13 of his statement. In the answer given to said question said Abdul Arhan has stated that on the faithful night on which incident was occurred, he was sleeping on cot

with his father i.e. the present applicant. However, deceased was sleeping with his mother on floor. Thus, on the basis of said answer, learned advocate for the accused submits that the aforesaid answer given by Abdul Arhan goes to show that prior to death, deceased was in custody of her mother and was not in the custody of present accused.

9) Lastly, Learned advocate for the accused/applicant invited my attention towards intimation letter which is at page No 215 of charge-sheet and pointed out that at the time of arrest, police has not communicated grounds of arrest to the accused. As such he submits that there is gross violation of section 47 of BNSS (Section 50 of Cr.PC.). As such, there is violation of Article 21 and 22 of the Constitution. As such he submits that the accused is entitled for grant of bail for violation of aforesaid mandatory provision. In support of his submission, he placed his reliance on the judgment of Hon'ble Bombay High Court in the case of **Sachin Mhipati Nimbalkar Vs. State of Maharashtra, 2024 : BHC-AS: 42737.**

10) On the other hand learned AGP Mr. R.S. Relkar, appearing for the State submits that at the time of arrest notice is given to the accused. As such he submits that there is compliance of section 47 of BNSS (Section 50 of Cr.PC.).

11) He further submits that deceased was in the company of accused at the time of her death. He further submits that deceased died of homicidal death. Therefore, onus shifts on accused and they

have to show that as to how the death of deceased is caused. But, the accused has not made any statement in his application regarding the same. He further submits that if the accused is released on bail, he may tamper the prosecution evidence and may pressurize the prosecution witnesses. On such counts, he prayed for rejection of bail.

**Reasons :-**

12) At the outset, it would not be out of place to mention here that the ground of non communication of grounds of arrest has not raised by the accused/applicant in his application. However, the learned advocate for the accused raised that ground during the course of his argument. As to the said aspect, it is necessary to peruse intimation notice which is at page 215 of Charge-sheet. From intimation notice, it appears that the said notice is of 09.07.2024. Said notice bear signatures of Investigating Officer and accused. In the said notice, in first para itself it has been specifically mentioned that crime No. 274 of 2024 for the offence punishable under section 302 of Indian Penal Code has been registered against him with P.S. MIDC Akola and accordingly, he has been arrested for investigation of said crime. Thus, from the aforesaid contents of intimation letter dated 09.07.2024, show that the accused was apprised about the reasons of arrest by the police. Apart from that from perusal of arrest panchanama, accused came to be arrested in presence of his relative Abdul Shamim Abdul Hakim, who signed arrest panchanama as one of the witnesses. Thus, from the aforesaid material discussed it can be very well said that there is no violation of article 21 and 22 of Constitution and section 47 of BNSS (Section 50 of Cr.P.C.). Therefore

the question of applicability of observations made by Hon'ble Bombay High Court in the case of Sachin Mahipati Nimbalkar (cited supra) does not arise. This is for the reason that the facts of the present case and facts of the case cited supra are altogether different. In the case cited supra, the accused was not communicated with grounds of his arrest. But, in the case at hand as discussed above, the investigating officer has very well communicated the grounds of arrest to the accused.

**13)** In the case at hand as discussed above learned advocate for the accused submits that no motive is surfaced after investigation. But, what was the motive of the accused behind commission of crime can be looked into after fulfilled trial. However, merely on the ground that there is no motive attributed to accused cannot be ground to release him on bail. This is for the reason that case is based on circumstantial evidence. As per statement of Abdul Arhan Abdul Wasim S/o accused persons, deceased was in their company on the faithful night. It would not be out of place to mention here that the accused has not stated anything showing as to how the deceased died while she was in his company and in the company of his wife.

**14)** Apart from that from perusal of postmortem examination report, it appears that in all 7 ante mortem injuries are mentioned by Medical Officer in column 7 of said report. Those injuries show that at the time of incident, the deceased tried to save her life and for that purpose she struggled and scuffled with the culprit. Apart from that as mentioned in postmortem examination report, deceased died of

homicidal death and at the time of death she was in custody of accused and his wife. But, as mentioned above the applicant has not stated anything leading to the death of deceased. Offence is serious. Deceased was only 11 years old at the time of her death. Punishment provided for this offence is death or imprisonment for life. Apart from that in the case at hand Abdul Arhan who is son of present applicant and another accused is the only key witness in the present matter, who was sleeping with accused and deceased in the said room, where the alleged incident occurred. If the accused is released on bail, there is every possibility that he may pressurize his son Abdul Arhan and other witnesses. Thus, for the aforesaid reasons, it would not be just and proper to grant bail to the accused. Hence, the application is liable to be rejected. Hence the following order.

**Order**

Application (Exh.5) for grant of regular bail is hereby rejected.

Date : 19.04.2025.

[ Sanjay P. Shinde ]  
Additional Session Judge, Akola.

Certificate

I affirm that the contents of this PDF file are same word for word as per original order.

|                   |  |
|-------------------|--|
| Name of Steno     | : S.V. Indane.   |
| Court's name      | : District Judge-3 and Additional<br>Sessions Judge, Akola |
| Date              | : 19.04.2025.  |
| Signed by P.O. on | : 19.04.2025.  |
| Uploaded on       | : 19.04.2025.  |