IN THE COURT OF THE SPECIAL JUDGE, [S.T. & S.C. (PoA) Act] MALKAPUR, DISTRICT – BULDHANA Before : Sanjaykumar V. Jadhav, Special Judge	
Special Case No. 21/2024	
MHBU11-000594-2024	Crime No. 162/2024 registered at Nandura Police Station, Taluka Nandura, District Buldhana for the offences punishable under Sections 302, 201,120-B, 364 read with Sec. 34 of the Indian Penal Code, 1860 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.
Applicant	**Rupesh Devidas Kurwade,** Age – 28 Years, Occu. – Labour, Resident of near Mahatma Phule School, Shivneri Chauk, Shegaon, Taluka Shegaon, District Buldhana.
Represented by	Mr. T.M. Hussain, Ld. Advocate.
Respondent	**State of Maharashtra** through Police Station, Borakhedi, Taluka Motala, Dist. Buldhana.
Represented by	Mr. V.M. Bapat, Ld. A.P.P.

ORDER BELOW EXH. 12

Date of Order : 01st March, 2025

Accused No.3 has filed this application under section 439 of the Code of Criminal Procedure, 1973

(Cr.P.C.) seeking regular bail. He is arrested on 07/03/2024 in the course of investigation of crime No.162/2024 of Nandura police station registered for offences punishable under sections 302, 201, 364 read with section 34 and section 120-B of the Indian Penal Code, 1860 (the IPC) with section 3(2)(v), 3(2)(va) of the Scheduled Cast and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act). The charge-sheet is filed on 04/06/2024.

2. The first informant – Sandip Arjun Tayade is owner of land in block No.340 of village Malegaon gond. On 03/03/2024 he found a dead body on the boundary of the land with multiple injuries on head, face and other places of the body. Apparently it was a case of murder and therefore, he went to Nandura Police Station. He lodged first information immediately on 03/03/2024. On the basis of it, crime No.162/2024 has been registered. The police went to the spot and recorded panchnama of the spot. Necessary samples were collected from the spot.

3. The investigation started during which the brother of the deceased – Abhishekh Ghope identified the dead body as that of Harshal @ Pappu Sadashiv Ghope. The

identification of the body was done on 04/03/2024. The postmortem was performed on 05/03/2024. Biological samples of the body were also taken out and have been sent to the forensic laboratory along with cloths of the deceased.

4. On 07/03/2024 the accused by name Adinath @ Akash Ravankar, Mayur Vijay Shelkar and Rupesh Devidas Kurwade came to be arrested. On the same day, the police seized Indica car bearing No.MH-06-AW-0548 having black colour. It was seized from the accused. The seat covers and mats of the car had got blood stains. A handkerchief was found inside the car with blood stains. Spanners along with a stone weighing 5 to 6 kg. with blood stains was also recovered from the car.

5. The police then went to Shegaon in relation to the crime and recovered CCTV footage recorded in almost 8 cameras installed in Shegaon town by the Municipal Counsil. With the help of expert CCTV footage was taken out. Hash value panchnama was prepared. The CCTV footage indicated that during the intervening night between 02/03/2024 to 03/03/2024 at around 2:20 a.m. to 2:30

a.m. the deceased was seen sitting on driver seat of one auto rickshaw and he was talking with his friend Nitin @ Golu Gaikwad. Black Indica car was seen chasing the auto rickshaw. In another CCTV footage, at around 2:34 a.m. to 2:50 a.m. accused No.1 – Adinath @ Akash was seen while alighting from the black Indica car. He was forcing the deceased to sit inside the car.

6. All the three accused were then arrested. The investigating officer then got medical examination of all the three accused performed through medical officer. Biological samples of the accused came to be collected on 07/03/2024 itself. During the course of investigation the accused became ready to narrate the manner of execution of crime and to show the place where the deceased was lastly dropped. The accused took the police to the places where the deceased was taken and also pointed out the same place where the dead body was found. The accused had burnt their cloths and that place was also shown by them from where the police recovered ash. That has been sent for analysis. Statements of several witnesses came to be recorded and ultimately on the basis of circumstantial evidence, charge sheet came to be filed against the accused.

7. Before filing of the charge sheet, ld. predecessor has released accused No.2 by name Mayur Vijay Shelkar by passing order in Regular Bail Application No.126/2024 dated 21/05/2024.

8. Present application is filed by accused No.3. He states that he is permanent resident of Shegaon. He has immovable properties at Shegaon. He is a law abiding citizen. He is unmarried. His mother is depending on his income. His father is dead. He is arrested only on the basis of suspicion. In the CCTV footage collected during the instigation, his presence is not seen. There is no prima facie material against him. No article is recovered from him. Another co-accused by name Mayur Shelar is released on bail. He stands on the same footing. Therefore, accused No.3 seeks his release on bail.

9. The application is opposed by the investigating officer. Ld. S.P.P. filed reply of the investigating officer at exhibit-13. The application is resisted by referring all relevant material from the charge sheet. According to him, there is sufficient material against all the accused. In case the accused is released on bail, he is likely to pressurize the

witnesses. Therefore, the application is sought to be rejected.

10. Brother of the victim filed reply at Exh.14 stating that the accused have committed murder of his brother. In case of bail, the accused may threatened him. Therefore, he prayed for rejection of the bail application.

11. Heard for both the sides at length. I have gone through the charge sheet minutely. Ld. advocate for accused No.3 argued that there is no direct or circumstantial evidence against accused No.3 to show his nexus with the homicidal death of Harshal. He submitted that the black Indica car is not owned by accused No.3. He has no relation with the car. He submitted that accused No.2 – Mayur is already released on bail on the ground that the evidence in the form of CCTV footage and CDR is not sufficient to presume guilt of the accused. He submitted that on the ground of parity, accused No.1 also be released on bail. He filed notes of arguments at exhibit-18. He pointed out that the CCTV footage does not show the presence of accused No.3. Search and seizure of the vehicle is not made from accused No.3. CDR Record are not useful

to connect him with the alleged incident. There is no statement showing involvement of accused No. 3.

12. He relied upon the decision in **Shubham Dnyaneshwar Patil Vrs. State of Maharashtra, [2024:BHC-AUG:8915]** in relation to ground of parity wherein ground of parity was considered for granting bail. He further relied upon the decision in **Rajeshkumar Madanmohan Roy Vrs. State of Maharashtra, [Bail Application No. 3135 of 2018, decided on 23/09/2019]** in which the bail was granted considering similar role of co-accused who had already been released on bail. He further relied upon the decision in **Monu Vrs. State of Hariyana, [2023:PHHC:088839]** which has considered the ground of parity for granting bail.

13. In **Sanjiv Bansal Vrs. State of Uttar Pradesh, [Spl. Leave to appeal No. 10536 of 2023 decided on 15/10/2024]**, it was observed that confessional statement recorded by Police cannot remain a part of charge-sheet and therefore should be ignored.

14. On the other hand, ld. S.P.P. submitted that seriousness of the crime cannot be ignored. He pointed out that the evidence in the form of CCTV footage, CDR report

and also the discovery of place at the instance of the accused cannot be ignored. He submitted that the chain of circumstances can be established through the evidence of witnesses and also with the assistance of the CCTV footage and CDR record. He called attention to the fact that all the three accused had switched off at once their mobile phone during the course of crime and switched on those in the next morning.

15. It needs to be considered that granting of bail though a discretionary power, it has to be exercised on the basis of settled principles and few relevant criteria. Seriousness of crime is one of the important criteria which needs to be considered while entertaining an application for bail. Nexus of the accused with the crime is also a material aspect which needs to be seen prima-facie on the basis of material produced on record. Other criteria such as likelihood of the accused of being absconded and his likelihood of pressurizing of witnesses are also relevant factors for granting bail.

16. Coming back to the present application, needless to say that the alleged offence is most serious offence

against human body. While considering the role of accused No.2, the material which is available on record is in the form of circumstantial evidence. Statement of witnesses by names Shaikh Javed and Mohommad Javed under section 164 of the CrPC would show that the deceased was always in the company of accused No.3 and Mayur Shelar. They all were habitually involved in the work of pickpocket. On 02/03/2024, the deceased was seen by this witness with accused No.1 and 3 while traveling in the same black indica which is seized by the police.

17. Pradeep Sudhakar Samsood is a witness who stated in his statement under section 164 of the CrPC that he had seen accused NO.1, 2 and the accused in black indica car. At around 12.00 at midnight, he was with the deceased – Harshal @ Papya and other two – Goludada and Nilesh at Ambedkar Chowk. He further mentioned that a video call had come to Goludada from accused No.3 – Rupesh in which accused No.3 had threatened that the deceased was going to be killed during that night. Thereafter the deceased was dropped at Gandhi Chowk. The statements of Nilesh Gavhale and Nitin Gaikwad contain the same facts.

18. It would be relevant to mention that the CDR reports indicate that mobile phones of all the three accused were switiced off during the period when the murder was committed. The mobile phones of all the accused were switched on in the next morning.

19. Another material evidence is the recovery of CCTV footage from the cameras installed by the Municipal Council at Shegaon town. During 2:00 a.m. to 3:00 a.m. the black Indica car was seen in the CCTV footage while chasing the auto rickshaw driven by the deceased. At one point of time, the deceased was forcibly taken into the black Indica car and the face of accused No.1 is seen in the CCTV footage as the same person who put the deceased in to Indica car. The motive for the crime has been disclosed by the witnesses. The statement of Nilesh Sarangdhar Gavhale is also material to indicate that during 2:00 a.m. to 2:30 a.m. the deceased was left at Gandhi Chauk from where the deceased was taken into the car as seen in the CCTV footage.

20. Due to the strong circumstantial evidence, which was probably not brought to the notice of the Ld.

predecessor at the time of entertaining the bail application No.126/2024, it would not be just to release accused No.3 on bail. It has been considered that after order in bail application No.126/2024, further investigation has been conducted and charge sheet has been filed. It is well settled that certificate under section 65-B of the Indian Evidence Act, 1872 can be produced at a subsequent stage during trial. Therefore, that evidence cannot be discarded at this moment. Keeping in view all these aspects, there is sufficient material to show involvement of accused No.3 in the crime. Therefore, he cannot be released on bail during the trial. The bail application will have to be rejected. Hence, the following order.

ORDER

The application is rejected.

Digitally signed by SANJAYKUMAR VIJAYKUMAR JADHAV
Date: 2025.03.01 18:16:51 +0530

Malkapur.
Date – 01/03/2025.

(S.V. Jadhav)
Special Judge
[S.T. & S.C. (PoA) Act],
Malkapur.

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