



**ORDER BELOW EXH. 37 IN SESSIONS CASE NO. 21 OF 2024**

1. This bail application is filed by accused No.3 Rupesh Devidas Kurwade, who is charge-sheeted along other accused for punishable under Sections 302, 201, 364 r/w 34 and 120B of the Indian Penal Code, 1860 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. The Spl. PP resisted it by filing say at Exh. 51 and additional say at Exh.55. The brother of deceased Harshal also resisted it orally.

3. I have heard learned Advocate Shri T. M. Husain, advocate for accused No. 3 and learned Spl. PP Shri. Bapat for the prosecution. I have also heard learned Shri. S. S. Badgujar, advocate for the relative of the deceased. I have gone through the charge-sheet

Addl.S.J.

and documents therewith. I have also gone through the written notes of arguments filed by the accused at Exh 59 and 62.

4. It may be noted that learned advocates for accused Nos. 1 and 3 has also argued on framing of charge along with their respective bail application at Exh. 26 and 37. They submitted that the same argument shall be treated in hearing before charge. The submissions of both sides are considered while passing order below Exh.1, whereby it is ordered to frame charge for the alleged offences. It would be apposite to reproduce the relevant part of the said order. It reads as follows: -

“3. Learned Spl. PP Shri. Bapat has referred the charge-sheet and documents therewith. He submitted that though there is no eye witness and the case is based upon the circumstantial evidence, there is sufficient material in support of each circumstance and those circumstances forms unbroken chain of events showing that there are reasonable grounds for proceeding against each accused.

4. On the other hand, learned advocates for the accused refuted the claim and they submitted that the case is based on assumptions and presumptions, therefore no offense is made out against any accused. They orally prayed for discharge.

5. First informant Sandip Tayade is the owner of land in block No. 340 of village Malegaon Gond. According to him on 03.03.2024, he found a dead body on the boundary of his land with multiple injuries on head, face and other parts of the body. As apparently, it was the case

of murder, the Police Station, Nandura registered offence under Section 302 of IPC vide Crime No. 162 of 2024 against unknown person. The Police visited the spot, prepared spot panchanama and collected necessary samples from the spot. The inquest panchanama was carried. As it was dead body of unknown person, it was kept in mortuary for being identified. During the investigation on 04.03.2024 Abhishek Ghope identified the dead body as that of his brother Harshal Ghope. The postmortem was conducted on 05.03.2024 and biological samples of the body were taken out and they are sent to the Forensic Laboratory along with the clothes of the deceased. It may be noted this part of the investigation is not challenged by any accused during the hearing. On the basis of this material, considering the antemortem multiple injuries on the dead body and the opinion expressed by the medical officer, it can be safely said that there is sufficient material to show that it is case of murder/culpable homicide.

6. On 07.03.2024, all three accused came to be arrested. On the same day, the police seized black coloured Indica car bearing No. MH-06-AW-0548. During the search of the car one blood-stained handkerchief, one blood-stained iron ring spanner, one blood-stained spanner, one blood-stained stone weighing 5 to 6 KG, one blood-stained piece of stone, the soil found in the car, the blood found on the car seat and the car were seized with the help of Asstt. Forensic Analyser (Asstt.) in presence of two panchas and search and seizure panchanama was prepared. The articles were sent to the Forensic Laboratory.

7. The investigation officer also recovered CCTV footage recorded in almost 8 cameras installed in Shegaon Town by the Municipal Council. With the help of

expert CCTV footage was taken out and hash value panchanama was also 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 India car and he was forcing the deceased to sit inside the car.

8. After arrest, the investigation officer got medical examination of all three accused performed through medical officer. Biological samples of the accused came to be collected on 07.03.2024 itself. It appears that during the investigation, on 08.03.2024, the accused had shown the how they had been to spot and also shown the spot. At the instance of accused Rupesh Kurwade, the shirt, jeans pant, one mobile phone along with two sim cards bearing No. 9168329294 and 8265000372 were discovered at his house. At the instance of accused Akash Rawankar, one mobile phone along with two sim cards bearing No. 7020915610 and 9307954655 were seized. At his instance, the ash of burnt clothes was seized from the back side of his house and from the front side of the primary school. All the seized muddemal came to be sent to Forensic Laboratory.

9. The investigation officer also recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure. Witness Nitin @ Golu stated the relations between him and the deceased and the relation between the accused and the deceased. He also stated what was happened from the evening of 02.03.2024 till the deceased alighted from rickshaw at

Gandhi Chouk. His statement shows deceased told him that the accused told that he would kill him (Nitin @ Golu) and the accused got angry over the same. The statements of Mohd. Javed Mohd. Nisar, Nilesh Gavhale, Pradip @ Barkya Samdur and Sk. Javed Sk. Hasan are more or less on the same line. There are also the statements of the relatives of the accused that the mobile phones were being used by the respective accused at whose instances, they were seized. The relatives of the deceased stated in their respective statements that the accused killed the deceased due to previous quarrels.

10. It may be noted the CDRs of the mobile phones are also collected by the investigation officer. After filing of the charge-sheet, the CDRs are produced along with the certificate under Section 65B(4) of the Indian Evidence Act.

11. Learned advocates for the accused rightly submitted the FIR does not state name of any accused and the accused were arrested on suspicion. They further submitted that the case is only based on the circumstantial evidence. They further submitted that prosecution has not stated specific role of each accused. They further submitted that there is no witness to state that the deceased and the accused were seen together. They further submitted that the Indica car was not seized from the accused and it cannot be said that it is discovered under Section 27 of the Indian Evidence Act. They further submitted that the case cannot be made out only on the basis of call details record. They further submitted that CCTV footage is not primary evidence, but it is secondary evidence. They further submitted that there is nothing against any accused in CCTV footage.

12. Learned Advocates for the accused rightly relied on the decision of the Hon'ble Supreme Court in **Kashi Ram vs. State of Rajasthan [(2006 12 SCC 254)]**; and the decisions of the Hon'ble Bombay High court in **Shaikh Kadar @ Guddu Shaikh vs. State of Maharashtra [2022 SCC OnLine Bom 1833]** and **Digamber Bhimshankar Kanade vs. State of Maharashtra [2021 SCC OnLine Bom 2540]** to submit that unless the chain of circumstantial evidence is complete and leads only to the guilt of accused, benefit must go in favour of the accused. Considering the circumstances shown in the present case, if they proved by the prosecution, they would complete the chain and would lead only to the guilt of accused. Moreover, at this stage framing of charge, it is sufficient to show that there is strong suspicion against the accused.

13. It is not challenged by any accused that the deceased was belonging to Scheduled Caste and they are not SC or ST. It is also not challenged that they did not know that the deceased was belonging to SC.”

14. Learned advocates for the accused also tried to scrutinize the statements of the witnesses recorded under Section 161 of the Cr.P.C., but such close scrutiny is not expected at this stage.

15. In view of the above discussion, upon hearing learned Spl.PP for the prosecution and the defense advocates; and upon going through the charge-sheet and documents therewith I am of the opinion that there are sufficient grounds for proceeding against the accused for an offense punishable under Section 302, 201, 364 r/w 34 and 120B of the Indian Penal Code, 1860 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Accordingly, I passed the following order: -

**ORDER**

The charge shall be framed against all accused for an offense punishable under Sections 302, 201, 364 r/w 34 and 120B of the Indian Penal Code, 1860 and Sections 3(2)(v) and 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Malkapur, Dist. Buldhana.

Sd/--

Date : 25.08.2025.

(Purushottam B. Jadhav)

Spl.Judge (u/SC&ST(POA)Act &  
Additional Session Judge Malkapur.”

5. As held in order below Exh. 1, this court came to be conclusion that there are sufficient grounds for proceeding against all the accused for the alleged offences. The offenses are very serious in nature. Learned Advocate for the applicant rightly submitted that the bail cannot be rejected only on that ground. He submitted that after the alleged offence, the applicant came to be arrested from house and it indicates that he had not absconded, therefore there is no possibility that the applicant would abscond if released on bail. He further submitted that all the witnesses are resident of Shegaon and Khamgaon, the applicant is ready to stay out of Shegaon, Khamgaon and Nandura Talukas and even out of Buldhana District. He also submitted that the trial would not conclude within reasonable time

Addl.S.J.

and therefore delayed trial would infringe the fundamental rights of the applicant.

6. It is true that the charge-sheet is filed on 04.06.2024, but the trial is yet to be commenced. But it may be noted that the matter was pending for hearing before charge and hearing on bail applications. Now they are being decided today. The order of framing charge is also passed today. Therefore, it is too premature to hold that the trial would not conclude within reasonable time.

7. Learned Spl. PP and learned advocate for the brother of the accused rightly submitted that the witnesses as to some circumstances are common friends of the accused and deceased; and if the applicant is released on bail, the said witnesses would get demoralized and therefore, there is every possibility of tampering of those witnesses. This possibility cannot be ruled out even the stringent conditions are imposed on the applicant. Considering the modus operandi of the accused in this case, there is every possibility that the applicant, if released on bail, would not be available for the trial.

8. It is true that co-accused Mayur Vijay Shelar has been released on bail by my learned predecessor vide order date 21.05.2023 below Exh. 1 in Cri. B. A. No. 126 of 2024. It may be noted that thereafter my learned predecessor has rejected bail application filed by present applicant, vide order dated 01.03.2024

Addl.S.J.

below Exh. 12 in this case. My learned predecessor has observed that due to the strong circumstantial evidence, which was probably not brought to the notice of the learned predecessor (learned judge who decided BA 126 of 2024) at the time of entertaining the said bail application, it would not be just to release accused No. 3 on bail. He also observed that after decision of that BA, the further investigation has been conducted and charge-sheet has been filed. He also observed that the certificate under 65 B of the Indian Evidence Act is also filed on record, therefore that evidence of CDR cannot be discarded. In view of these facts, the present applicant cannot seek bail on the ground of parity.

9. As noticed above, the bail application of this applicant came to be rejected by my learned predecessor after filing charge-sheet and considering the material on record. Therefore, the present bail application deserves to be rejected since there is no change in circumstances after rejection of the said application. Learned Sp. PP rightly relied on the decision of Hon'ble Supreme Court in **Virupakshappa Gouda vs. State of Karnataka [(2017) AIR CR(CRI) 843]** to submit that accused can move successive application for grant of bail, but bail application cannot be allowed solely or exclusively on the ground that fundamental principle of criminal jurisprudence is that accused is presumed to be innocent till he is found to be guilty by competent Court. He also rightly submitted that the bail cannot be

Addl.S.J.

granted in subsequent bail application, unless there is change in circumstance.

10. In view of the above discussion, not only the offences are serious, but also there is possibility of tempering of the prosecution witnesses and the possibility that the applicant would not available for the trial. Therefore, it is not proper to release the accused on bail. Secondly, there is no change in circumstances since rejection of last bail application filed by the applicant. The application deserves to be rejected. The trial can be expedited. Accordingly, I pass the following order: -

**ORDER**

1]	Bail application (Exh. 37) is hereby rejected.
2]	The trial is expedited. The parties are requested to co-operate the Court for early disposal of the case.
3]	The concerned Police Station shall be directed to produce the Muddemal property and CA reports, if it is not already complied.
4]	Application is disposed of accordingly.

(Purushottam B. Jadhav)  
Spl.Judge u/SC&ST(POA)Act  
Additional Session Judge Malkapur.

Dt.25/8/2025

Addl.S.J.

**Certificate**

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

Name of Steno : Mrs.Nishat Anjum Mohd.Rafique.

Name of Court : Special Judge, Malkapur, Dist. Buldana.

Addl.S.J.