

MHGA010008182024



IN THE COURT OF SESSIONS AT GADCHIROLI

(Presided over by Shri Prashant R. Sitre)

Sessions Case No. 69/2024

(Crime No.142/2024)

Vaibhav Manoj Sahare

Aged- 19 years, Occu. Labour,
At. Chikhali, Tah. Kurkheda,
Dist. Gadchiroli.

**applicant /
... Accused no.2**

..Versus..

State of Maharashtra

Through PS, Kurkheda,
Tah. Kurkheda, Dist. Gadchiroli.

... Respondent

Adv. Shri. N.U. Lodalliwar for the accused
PP Shri. A.S. Pradhan for the State

ORDER below Exh. 7

(Passed on 08.01.2025)

1. This is an application filed by accused seeking his release on regular bail in Sessions Case No.69/2024 arising out of Crime bearing No. 142/2024 for the offences punishable u/Sec. 103(1) r/w 3(5) of the Bhartiya Nyaya Sanhita, 2023, registered with Police Station Kurkheda, Tah. Kurkheda, Dist. Gadchiroli.

2. According to the prosecution, Bhawandas Sahebadas Pagadwar registered the complaint to the police on 09.08.2024 contending that on 08.08.2024 at about 2:00 p.m. the son Jitesh of informant told to him that he wants to go to bring Satya (Mushroom) with his friend Nandu Bisram Lillare by his motorcycle and thereafter they went away. Till 7:00 p.m. Jitesh has not come and therefore, the informant went to the house of Nandu Lillare, but his house was closed and no one is there. His elder son Mithun was busy in his work and thereafter, I slept. On 09.08.2024 at about 01:59 a.m. Police Patil Pornima Sontakke informed on phone of Mithun that his brother was lying in injured condition on Chikhali - Wadegaon road and she called him to see his brother. Mithun and Komal Haridas Basona went to Wadegaon road Chikhali near Govinda Boli bridge, where they saw Jitesh, who was lying in pool of blood. Thereafter, he phone called the informant and he went on the spot. Informant saw that Jitesh was lying in a pool of blood. He was having the injury caused by sharp edge weapon on his head, neck and back.

3. The informant further contended that prior to eight days of the incident, accused nos. 1 & 3 came to his house and threatened his son Jitesh that "our mobile was stolen, you will be killed and will cut your hand and legs". At that time, he himself, his wife, his elder son Mithun were present and accordingly the crime was registered against the unknown person.

4. On the basis of this information, police went there and make an inquiry. During the investigation, the deceased Jitesh was last seen with the accused no.1 Vishal, accused no.2 Vaibhav and accused no.3 Aman and hence they made an accused in this case. After detail investigation charge-sheet is filed against the accused persons.

5. The learned advocate submitted that during the custodial interrogation accused Vishal Pisore and accused Aman Pathan have admitted that they killed Jitesh and told the name of this accused and hence, accused was arrayed in this offence. The applicant was arrested on 09.08.2024. The allegations that during memorandum panchanama, the accused took out the arms and clothes used in the crime.

6. The learned advocate further submitted that the FIR is registered against the unknown person on 09.08.2024. The statement of the informant categorically pointed out that the deceased was went with the Nandu Lillare in jungle for collection of Satya (Mushroom). It means he is in the company of Nandu Lillare prior to the death. As per the story of the informant, Nandu Lillare is the person to whom last seen theory is applicable. But it is very surprising that he is not made an accused in this case by the I.O. The said fact pointed out that the investigation is not carried out properly.

7. The learned advocate further submitted that accused nos.1 & 3 threatened the deceased prior to 8 days of incident. But no one has given any complaint to the police

regarding the same. If really, they gave the threat then they must register the complaint. Non-registration of the complaint also makes things doubtful.

8. The learned advocate further submitted that the deceased and the applicants are residing in the same village and hence, they were seen together in the village but that does not mean that accused killed the deceased.

9. The learned advocate further submitted that only on the basis of memorandum statement and recovery panchanama, the accused are arrayed as an accused. But as per the new Act the memorandum statement must be recorded before the Magistrate, but that is not so. Not only this, but the confession is also not recorded before the Magistrate. The procedures are not followed by the I.O. and hence, investigation itself is defective. Therefore, reliance cannot be placed on the memorandum statement and recovery.

10. The learned advocate further submitted that if we perused the statements of the witnesses, then it is found that it was told by the accused that he killed the deceased, but the FIR is registered against the unknown person. Then why it is so is not at all explained by the witness. Not only this, but the FIR must contain the names of the accused persons, when the name of accused specifically told by the witnesses. If we minutely think, then it found that FIR is manipulated.

11. The learned advocate further submitted that as per the statements of witnesses, the party is going on in the house

of Nandu and the accused was standing near the Z.P. School. Only because the accused was standing near the Z.P. School, does not mean that he committed the said crime. All the story is suspicious one.

12. The learned advocate for the accused further submitted that from the age of childhood the deceased was the habitual offender. He was also convicted in the offence of rape under POCSO Act. At the time of alleged incident, he was under-trial under the offence of theft. These facts were suppressed by the prosecution. The fact clearly indicate that there may be enmity of the deceased with some other persons and hence they might have killed the deceased.

13. The learned advocate further submitted that on the say of co-accused persons, this accused has been falsely implicated in the crime. The evidence collected by the I.O. is suspicious. There is no nexus of the accused with the crime. On perusal of the charge-sheet, by seeing the number of witnesses it takes long time for conclusion of trial and accused may be remained in jail till uncertain period. He is only the bread earner of his family. Nothing is remained left for any recovery or discovery. No purpose will be served to keep the accused behind the bar.

14. The learned advocate further submitted that the accused has no criminal antecedent to his discredit. He is poor person. He is permanent resident of above mentioned address and hence, there is least chances to flee away. The accused is

arrested on 09.08.2024 and since then, he is in jail. Already sufficient time is passed when he is in jail. Accused is ready to abide each and every conditions imposed by this Court and hence, prayed to release him on bail.

15. The learned PP by filing his say at Exh.12 strongly opposed the application on the ground that offence is serious in nature. The plan of murder of deceased was prepared with cold mind state. The statements of the witnesses speak that accused and other co-accused have taken the deceased with them. The said fact is corroborated by the other witnesses.

16. The learned PP further submitted that the statements of the witnesses were corroborative in the nature. The theory of last scene is clearly reflected from the statement of the witnesses. The post-mortem report also corroborative in nature and the cause of death is head injury with injury to vital organ and splenic rupture.

17. The learned PP further submitted that the connected link of last scene theory is clearly seen from the act of accused. The accused has seen with the deceased in the village prior to the incident. The jacket, which was wear by the accused, having blood stains and the same was seized by the police. The accused threatened the witness, who is a shopkeeper, and told him to give T-Shirt. The blood stained rod is also recovered from the accused, which is a weapon of offence. On the perusal of this fact, it appears that the chain of circumstantial evidence is completed. Hence, the accused is

directly involved in the offence.

18. The learned PP further submitted that the memorandum statement and recovery panchanama also categorically pointed out that accused is involved in this offence.

19. The learned PP further submitted that the P.M. report clearly pointed out that the cause of death is head injury. It means all the accused pre-planned to kill the deceased. There are many injuries on the body of deceased. The said fact also pointed out that accused are the persons, who are directly involved in this offence. Considering the nature of the offence and the involvement of the accused in this offence, he prayed to reject the application.

20. Heard both the sides at length and perused charge-sheet.

21. The record shows that during the investigation, it was found that accused and the other co-accused took the deceased with them. The statement of the witness Anil Lillare speaks that the accused and the other co-accused took the deceased. The statement of this witness is corroborated by the statement of witness Pradesh Janbandhu.

22. The blood stained rod was seized at the instance of the accused persons. So also, the jacket was seized, which is having blood stains, it means prima facie, it seems that evidence is against the accused and they are involved in this offence.

23. If we perused the post-mortem report then, it appears that accused persons assaulted the deceased by means of sharp edge weapon. The P.M. report clearly reflects that there was an head injury and the injury is such a nature that it directly break down the skull i.e. fracture of skull with brain protruding out. It means the accused assaulted the deceased to such an extent that the skull is broken down. This fact categorically speaks that accused persons have only an intention to kill. The act of the accused are barbarian in nature, otherwise brain cannot protruding out of the skull.

24. The head injury clearly speaks about intention and motive of the accused. Head is the vital part of the body. Skull is toughest part of the body. The fracturing of the skull itself speaks the volume.

25. If we perused the version of the witnesses, then it is crystal clear that accused is directly involved in this offence. The ingredients and the characteristics of the last scene theory is prima-facie reflected. It appears that prima-facie accused is involved in this offence.

26. From the above facts and circumstances, it is crystal clear that accusation against the accused are well founded. The offence of murder is serious in nature and the allegations against the accused is specific and clear. Moreover, prima facie evidence is against the accused.

27. Considering the seriousness of the offence and the way of committing the offence, I pass the following order.

..9.. Session Case No.69/2024 (Exh.7)

ORDER

Application of Exh.7 in Sessions Case No. 69/2024 is rejected.

Date : 08.01.2025

(**Prashant R. Sitre**)
Additional Sessions Judge,
Gadchiroli