



**ORDER PASSED BELOW EXH.51IN
SESSIONS CASE NO.14/2024**

This is an application filed by applicant/accused No.1 Sahil Aslam Salmiwale for bail U/s. 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS) in Crime No.191/2024 for the offence punishable U/s.302 @ 120B read with 34 of the Indian Penal Code, registered at police station Jaysingpur (Sessions Case No.14/2024) .

2] Facts in brief are as under :-

Complainant Netaji Chavan resides with his family at Jaysingpur Dist.Kolhapur. He is civil engineer by profession. Deceased Sachin was his brother. Earlier complainant, Sachin and their family was residing at Sangli. At present complainant is doing railway bridge work at Sangli. Earlier there was murder of Datta Patole and crime No.103/2020 for the offence punishable under section 302 of the Indian Penal Code was registered at police station MIDC, Kupwad. In that case, complainant's brother Sachin was accused. Therefore, Patole's have grudge against family of complainant and therefore, they have shifted to Jaysingpur. Prior to one month of the incident, Sachin was released on bail. Sachin was residing with complainant. Because of terror of Patole, complainant did not use to permit Sachin to go alone outside the house.

3] According to prosecution, on 11-04-2024, at about 9.30 am, Sachin went with his friend Sandesh Ghagare @ Sandy on his motorcycle bearing No.MH-10-DP-0795 to meet his friend at Asta Dist.Sangli. At 12.00 noon, complainant made phone call to Sachin and at that time Sachin had told that he and Sandesh came to meet

their friend Gajanan Gavali at Asta. Then at about 5.15 pm, complainant received phone call from the friend of Sachin namely Sonya @ Bapu and he asked to the complainant whether Sachin has quarrel with anyone and where is Sachin. Complainant informed to him that Sachin went with Sandesh. Thereafter, Sandesh was taken on conference and Sandesh told that Sachin dropped him at Kupwad and went on his motorcycle to Jaysingpur. Thereafter, complainant made phone call to Sachin but his phone was busy. Accordingly, at 5.30 pm, complainant was coming from Nadhav Nagar, Sangli to Jaysingpur. At the relevant time, he was taking search of his brother. He reached near Khot petrol pump around 6.00 pm. He saw that people were gathered near Prabhat Rolling Shutters/Engineering works. He also saw the motorcycle bearing No.MH-10-DP-0795. He entered in the said shop and saw that his brother Sachin was lying in the pool of blood. He came to know that Sachin was assaulted by sharp weapon on his head, back etc. His two ears were broken, his right paw was separated from his hand. The blood was oozing from his head and ear. He went to police station. Police informed him that they arrested accused Sahil Samalivale and Parshuram Bajantri. They also told that other accused ran away. The motive of the crime was earlier dispute between Datta Patole and Sachin. Accordingly, complainant lodged report in the police station.

4] On the report, crime was registered and investigation was started. During investigation, police seized weapons from the accused. Panchanamas were prepared. Statements of witnesses were also recorded. The muddemal was sent to chemical analyzer, Kolhapur and after completion of investigation, chargesheet came to be filed against accused. It is alleged that accused No.1 to 6 conspired to commit the murder of Sachin and all the accused were present on

the spot. After the incident, immediately people gathered on the spot and therefore, accused ran away from the spot.

5] Mr.R.P Pawar, advocate for the accused submitted that accused is innocent and he has not committed any crime. Accused is falsely implicated in the present crime. There was no conspiracy between accused and the evidence is required to establish the conspiracy between accused. This court had rejected the bail application of accused No.6 Gajanan Sargar and he had filed bail application before the Hon'ble High Court bearing No.5198 of 2024. The Hon'ble High Court held that the allegations against accused Gajanan Sargar are of conspiracy and thus, granted him bail. Subsequently, accused No.3 to 5 are released on bail by this court considering the principle of parity and the role of accused. Thus, in the present case, no different role is assigned to the accused. Therefore, principle of parity is applicable in the present case. The prosecution case is based on circumstantial evidence. The record does not disclose the role of present accused. There is no recovery at the instance of accused. Accused is in jail from 12-04-2024. The antecedents of accused are clear. He further submitted that further custodial interrogation of accused is not necessary. In the statements of witnesses the name of present accused is not appearing. There is lack of motive and *mens rea*. Accused is ready to abide by the conditions imposed by the court. Hence, he prayed to release the accused on bail. In support of his contentions, he relied on **Sharad Birdhichand Sarda Vs. State of Maharashtra (1984)4 SCC 116, Kali Ram Vs. State of Himachal Pradesh (1973)2 SCC 808, Sanjay Chandra Vs. CBI (2012)1 SCC 40, Dataram Singh Vs. State of U.P.(2018) 3 SCC 22, P. Chindambaram Vs. Directorate of Enforcement (2019) 9 SCC 24, State of Rajasthan Vs. Raja Ram (2003) 8 SCC 180.**

6] Mr.U.M.Kulkarni, learned APP for the state submitted that the role of present accused is different than the accused who are released on bail. The present accused and accused Parshuram Bajantri followed the deceased in fabrication workshop and committed his murder by sharp edged weapons. The weapons are seized from the accused. Incidentally, at the relevant time, police officers of Nirbhaya Pathak were going from there and they caught present accused and accused Parshuram. Their clothes were stained with blood. Thus, these both accused have actually committed the murder of deceased. Therefore, his role cannot be equated with the role of other accused. He further submitted that charge is framed. The offence is serious. He prayed to reject the application.

7] Here in the present case, initially accused No.6 Gajanan Sargar had filed bail application before this court. His application was rejected. He had approached before the Hon'ble High Court. The Hon'ble High Court allowed his application. The Hon'ble High Court held that the allegations against the applicant are of conspiracy. There are no other criminal antecedents against the applicant. Considering the nature of allegations against the applicant, the Hon'ble High Court inclined to release him on bail. Subsequently accused No.3 to 5 namely Amit @ Anil, Sonal @ Tushar and Prathamesh @ Gotya have filed bail applications before this court. Considering the order of Hon'ble High Court the role of accused Amit, Sonal and Prathamesh was similar to accused No.6 and thus by applying principle of parity, they were released on bail.

8] In **Sharad Birdhichand Sarda (supra)** the Hon'ble Supreme Court held that circumstantial evidence must form a complete chain. In **Kali Ram (supra)** the Hon'ble Supreme Court held that suspicion,

however strong, cannot take the place of proof. In **Sanjay Chandra (supra)** the Hon'ble Supreme Court held that bail is rule and jail is exception. Long incarceration plus trial delay, bail must be granted. In **Dataram Singh (supra)** the Hon'ble Supreme Court held that presumption of innocence applies at bail stage. Parity is important. In **P. Chindambaram (supra)** the Hon'ble Supreme Court held that bail granted when no recovery to be made. Investigation complete, accused is not flight risk. In **State of Rajasthan (supra)** the Hon'ble Supreme Court held that recovery without scientific connection or corroboration, weak evidence. However, the facts of present case are different than the cases cited by the advocate of accused. Hence, the ratios laid down by Hon'ble Supreme Court in above cases do not applicable to the present case.

9] Reverting to the factual score of the present case, it appears that present accused and accused Parshuram followed the deceased in fabrication workshop at Udgaon. Accused were armed with deadly weapons i.e. *edaka* and they caused multiple injuries to the deceased. Deceased died on the spot. At that time time, Nirbhaya Pathak vehicle was going from there and they arrested the present accused and accused Parshuram. Their clothes were stained with blood. It also appears that accused had weapons with them. Thus, present accused and accused Parshuram were apprehended alongwith weapons. It is pertinent to note that, there is specific name of present accused and accused Parshuram Bajantri in the FIR. Thus, principle of parity is not applicable to the case in hand.

10] The offence is serious. In the investigation, specific role is assigned to the accused. Charge is framed. The case was fixed for depositing the muddemal and in mean time accused has preferred

this application. Considering the seriousness of the offence and punishment prescribed for the same, I find that accused is not entitled for bail. Therefore, the following order.

:: ORDER ::

Application is rejected.

Jaysingpur.

(G.B. Gurao)

Dt.: 02-01-2026.

Additional Sessions Judge,
Jaysingpur.