

MHNS070001482023

S. C. No. 15 of 2023



The State of Maharashtra

Vs

Bilal Ahmed Mohammad Ayyub (A-2)

**ORDER BELOW Exh.28**  
**(Passed on 14/05/2025)**

1. This is successive application for bail under Section 483 of the Bhartiya Nagrik Suraksha Sanhita, 2023, (old Section 439 of the Code of Criminal Procedure, 1973) for grant of regular bail to accused No.2 namely Bilal Ahmed Mohammad Ayyub who is chargesheeted in connection with C. R. No.62/2021 registered at Ramjanpura Police Station, Malegaon for the offence p/u/s 302, 201 r.w. 34 of the Indian Penal Code and Section 4 r.w. 25 of the Indian Arms Act and Section 37(1)(3) p/u/s 135 of the Maharashtra Police Act.

2. Ld. APP for the State opposed the application by filing written say of I. O. at Exh.29.

3. The informant appeared through his Ld. Advocate and opposed the bail application by filing written say at Exh.31.

4. Heard, Shri. K.D. Bagul, Ld. advocate for the accused No.2, Shri. S. K. Sonawane, Ld. APP for the State and Shri Anjar Shaikh Ld. Advocate for informant. They argued vehemently.

5. Ld. Advocate for the accused No.2 submitted as under :-

Accused No.2 is arrested in connection with said crime on 28.07.2021 and remanded in P. C. R. till 07.08.2021. Since 07/08/2021 he is in M.C.R. Therefore, for more than 4 years he is in jail. Accused No.3 filed bail application No.102/2022 and it was rejected by the Sessions Judge, Malegaon. Therefore, accused No.3 filed Bail Appln. No. 2554 of

2022 before the Hon'ble High Court at Judicature at Bombay and the Hon'ble High Court granted bail to accused No.3. Thereafter, accused No.4 filed Cri. Bail Appln. No. 64/2023 and the Sessions Judge, Malegaon vide order dt.07/02/2023 granted bail to accused No.4. Accused No.5 filed Cri. Bail Appln. No. 641/2022 and vide order dt.22/12/2022 the Sessions Judge, Malegaon granted bail to accused No.5. The bail application filed on behalf of accused no.2 before the filing of charge-sheet is rejected by the Sessions Judge, Malegaon. Thereafter, accused No.2 filed Bail Application at Exh.15 and this Court vide order dt.02/01/2024 rejected the said bail application. Now in the changed circumstances the present application for bail is filed on behalf of accused No.2. It is alleged that accused No.1 assaulted deceased by means of knife on his chest and accused No.2 assaulted the deceased by means of sword on his head and accused No.3 instigated accused No.1 and 2. In fact, the accused No.2 has not committed alleged offence. He is arrested only on the basis of suspicion. The case is based on circumstantial evidence. There is no direct evidence against accused No.2 showing his involvement. As the charge-sheet is filed custodial interrogation with accused No.2 is not necessary. He is married person, therefore, his wife and children are dependent on him. He has no criminal antecedents. He is having permanent residence. He will not pressurize the witnesses. He is ready to abide all conditions of bail. He will co-operate with the Investigating Officer for further investigation, if any. Therefore, regular bail be granted to the accused No.2.

6. Ld. Advocate for accused No.2 submitted further that when the case is based on circumstantial evidence and there is no direct evidence against the accused then bail should be granted to the accused. In support of his submissions he relied on the following case laws.

- 1) **Asif s/o. Imtiyaj Ali V/s. State of Maharashtra DLD (Cri) 2024- 3490**
- 2) **Mangal w/o. Hukumchand Sale V/s. The State of**

- Maharashtra DLD (Cri) 2022-609**  
3) **Prashant @ Digya Bhanudas Dighe V/s. The State of Maharashtra DLD (Cri) 2022-974**

7. On the other hand Ld. APP for the State and Ld. Advocate for the informant submitted as under :-

All earlier bail applications filed on behalf of accused No.2 are rejected. Bail application filed on behalf of accused No.2 after filing of charge-sheet is also rejected by this Court. There is no change in circumstances. Therefore, this bail application itself is not tenable. While deciding application at Exh.15 it is observed by this Court that the law of parity cannot be applied to accused No.2 as there is specific role attributed to the accused No.2. There is sufficient material and evidence against accused No.2 and other accused showing their involvement in committing the murder of deceased. Accused No.1 to 3 assaulted the deceased by big knife and sword and committed his murder. Accused No.4 and 5 abetted the said crime by providing sword to the accused No.2. In the CCTV Footage there is evidence in that respect. Specific overt act is attributed to the accused No.2. The offence is punishable u/sec.302 r/w 34 of I.P.C. and it is punishable with death or imprisonment for life. If the accused No.2 is released on bail he will pressurize the informant and witnesses. Offence of murder is a serious offence. If bail is granted there is every possibility of accused No.2 committing similar kind of offence against informant. Therefore, the application for bail should be rejected.

8. Admittedly, accused No.1 to 5 are chargesheeted for the offence p/u/s. 302, 201 r.w. 34 of the Indian Penal Code and Section 4 r.w. 25 of the Indian Arms Act and Section 37(1)(3) r.w. 135 of the Maharashtra Police Act. Record shows that the charge-sheet is committed to the Sessions Court and case is allotted to this Court. I have gone through the contents of FIR. It is lodged on 28.07.2021 at Ramjanpura

Police Station. It is alleged that on 27.07.2023 between 07.15 p.m. to 07.30 p.m. the informant received phone call of his brother i.e. deceased, informing that accused had come at Panstall and they are demanding Gutkha and Panmasala and when he demanded amount, outstanding from them, the accused started threatening him and accused are possessing sword, knife etc., therefore, the informant went there immediately. In the FIR it is further alleged that when the informant was proceeding on his motorcycle he received a phone call of his friend informing him that brother of informant has been pushed down by accused Jalil and accused Jalil is instigating his brothers i.e. co-accused to assault the deceased, therefore, accused No.1 assaulted the deceased on his stomach and chest by means of knife and accused No.2 assaulted the deceased on his head by means of sword, therefore, the deceased is severely injured and he has been taken in the Civil Hospital, Malegaon. According to informant when he reached at Civil Hospital, Malegaon condition of his brother/deceased was very serious therefore Medical Officer advice him to took his brother in another hospital and therefore, the deceased was taken to Swad Hospital, Malegaon in Ambulance and doctor declared that brother of informant (the deceased) is dead.

9. I have gone through the statements of other witnesses. They are supporting the contents of FIR. It appears that statement of witnesses are also recorded u/sec.164 of Cr. P. C. In those statements role attributed to the accused No.2 is that he assaulted the deceased on head by means of sword. In the Inquest Panchanama and also in the Postmortem Notes it is noted that there is severe injury on the head of the deceased. As per the Postmortem Notes the cause of death is “ Death due to ‘Asphyxia’ due to cardio-reparatory arrest due to stab injury to lungs. ” There is sufficient material and evidence against accused No.1 and 2 showing that the brother of informant (deceased) died because of the injuries caused to

him in the said incident. During investigation sword, big knife and blood stain clothes and other articles are seized by police. Therefore, prima facie it can be said that accused No.1 to 3 are involved in the crime. Specific overt act is attributed to accused No.2. He used sword and caused severe injury on the head of the deceased. Therefore, it can be said that accused No.2 and other accused were having common intention to commit the murder of deceased and that because of the injuries caused by the accused No.1 and 2 the deceased died.

10. The Hon'ble High Court of Judicature At Bombay granted bail to accused No.3 Jalil Ahmed on the ground that he was not carrying any weapon and there is no recovery from the applicant and the role attributed to accused is of instigation to other accused and active role is attributed to accused No.1 and 2. I have gone through the case laws on which the Ld. Advocate for the accused No.2 is relying. In those case laws the case was totally based on circumstantial evidence and there was no direct evidence against accused, therefore bail was granted to the accused. However, in the present case, there is ample material and evidence showing the involvement of accused No.1 and 2 in assaulting the deceased and committing his murder. Therefore, the said case laws are not applicable to the present case.

11. Record shows that bail application Exh.15 filed on behalf of accused No.2 after the filing of charge-sheet is rejected by this Court. Considering the role attributed to accused No.2, it can be said that his role is different than the role attributed to accused No.3, 4 and 5. Therefore accused No.2 cannot claim bail on the ground of parity. The offence p/u/s 302 of I.P.C. is punishable with death or imprisonment for life. Already charge is framed against accused No.1 to 5 on 07/10/2024 and therefore the trial can be expedited. In view of this and considering the nature and gravity of offence, punishment prescribed for the offence, the material

against accused No.2 and objections raised by the Ld. APP, and Ld. Advocate for the informant, it can be said that the accused No.2 is not entitled for regular bail. As such, the application is to be rejected. Hence, I pass the following order.

**ORDER**

1. The application (Exh.28) is rejected.
2. Inform accordingly, to the D.G.P./PP, concerned Jail Authority and the Police Station Officer of concerned Police Station.

(Soft copy of this bail order be sent to the concerned Jail Authority through E-mail for providing its copy to accused No.2.)

Date- 14/05/2025.  
Malegaon.

( K. R. Patil )  
Addl. Sessions Judge, Malegaon.  
Dist. Nashik.