

**Sessions Case No. 71 of 2023**

The State of Maharashtra

Vs.

- (2) **Bharat @ Rinku Ilachand Patil**  
(3) **Rakesh Pavaba Savale**

**Order below Exh.7**

[1] Accused Nos. **(2) Bharat @ Rinku Ilachand Patil** and **(3) Rakesh Pavaba Savale** have filed this application for grant of bail under section **439** of the Code of Criminal Procedure.

**Prosecution case in short is as follows :-**

[2] On 24.03.2023 informant Balasaheb Sakharam Thakare, resident of Ladud had been to his house. At that time, he learnt that there was dead body of a man of about 35 to 40 years of age lying near the bank of river Mosam. Sometime, thereafter, Yuvraj Thakare, son of the informant came back to the house and informed the informant that the dead body was of his relative by name – Dattatraya @ Pintya Rajaram Thakare. Accordingly, the informant went to the said spot and identified the dead body to be of Dattatraya Thakare. Then, he reported the incident to Jaikheda Police Station. Accordingly, crime vide C.R.No.I 117/2023 under section 302 of the IPC came to be registered against unknown person. Thereafter, inquest panchanama of the dead body was drawn. Then, the post-mortem was conducted and thereafter, funeral was performed.

[3] During the investigation, it has been revealed that accused No.1 Madhuri is the wife of the deceased. She has extra marital affairs with accused No.2 – Bharat, whereas accused No.3 is the friend of accused No.2. The deceased was hurdle in the said extra marital affairs. Therefore, the accused hatched conspiracy and killed the deceased by giving blow of stones on his head. Therefore, the accused came to be arrested.

[4] First Bail Application bearing No. 316 of 2023 filed by accused No.3 Rakesh Savale was rejected by this Court on 16.06.2023 before filing of the charge-sheet. Now, investigation of the crime is completed and the charge-sheet is filed. Therefore, on the ground of change in circumstances, the accused have filed this application for grant of bail.

[5] Learned Advocate for the accused submitted that the FIR came to be lodged against unknown persons. There is no direct evidence of eye witness to show that the accused killed the deceased. Only on the basis of telephonic communication among the accused persons, the prosecution has presumed that there were illicit relations between accused No.1 Madhuri and accused No.2 Bharat. Except, the said telephonic communication, there is nothing on record to show that the accused have committed an offence as alleged by the prosecution. Now the investigation of the crime is completed

and the charge-sheet is filed. Since more than 3 and half months, the accused are in Jail. They are permanent resident of village – Aasane, Tal. & Dist. Nandurbar, having no criminal antecedents. They are ready and willing to abide all the terms and conditions which will be imposed by this Court. On these grounds, he prayed for grant of bail.

[6] On the other hand, learned APP submitted that during the investigation the Investigating Officer recorded statement of minor daughter of the deceased wherein, she has stated the accused Nos.2 & 3 took her father and killed him. Besides, two other witnesses disclosed that they saw the accused Nos. 2 & 3 while taking the deceased by motorcycle towards river Mosam and on the next day, they came to know that that it was the dead body of Dattatraya Thakare. Moreover, there is evidence in the form of telephonic communication against the accused persons. Nature of the crime is serious. No doubt, investigation of the crime is completed and the charge-sheet is filed. However, there is prima facie evidence against these accused. If the accused are released on bail, they will pressurize the minor daughter of the deceased, who is important witness of this case. Moreover, if the accused are released on bail, possibility of their absconding and tampering with the prosecution witnesses / evidence, cannot be ruled out. On these grounds, he prayed for rejection of the application.

[7] On perusal of the charge-sheet, it appears that during the investigation the Investigating Officer recorded statement of minor girl – Dakshita, the daughter of the deceased. She states that Bharat Kaka (accused No.2 ) and Rakesh (accused No.3) took her father by motorcycle. Previously she and her mother (accused No.1) had also gone with said Bharat and Rakesh to Shirdi. She further states that her father used to quarrel with her mother i.e.accused No.1 as she used to talk on mobile phone with Bharat.

[8] The Investigating Officer also recorded statements of witnesses by name; Mohasin Nijam Shaikh and Sher Khan Liyatkat Khan Pathan. They state that on 23.03.2023 at about 10.00 p.m., they saw accused Bharat and Rakesh while they were taking the deceased by their motorcycle towards river Mosam and on the next day, they came to know that both the applicants were carrying the deceased by their motorcycle. Besides, the Investigating Officer collected CDR and SDR of the mobile phones of the accused, which prima facie sufficient to show that there had been telephonic communication among them. All these facts and circumstances, are sufficient to show involvement of the accused in this crime. No doubt, investigation of the crime is completed and the charge-sheet is filed. However, there is prima facie evidence in the form of statement of minor daughter of the deceased and there is

further evidence in the form of statements of two witnesses by name; Mohasin Nijam Shaikh and Sher Khan Liyatkat Khan Pathan, which is sufficient to show that the deceased was lastly seen by them with the accused persons. In the circumstances, if the accused are granted bail, they can pressurize the minor daughter of the deceased and other two eye witnesses and thus, possibility of tampering with the prosecution witnesses / evidence, cannot be ruled out. Similarly, possibility of their absconding cannot be ruled out. In the circumstances, filing of the charge-sheet cannot be considered as sole ground for grant of bail. Therefore, I am of the opinion that the accused are not entitled for grant of bail. In the result, the application deserves to be rejected. I, therefore, pass the following order :-

**ORDER**

Application is rejected.

**(S.B. Bahalkar)**

Additional Sessions Judge,  
Malegaon.

Date 11.08.2023

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