

Order below Exh. 02 in Sessions Case no. 328/2025.

1. Vide present application accused Naeem Akhtar Abdul Kareem and Shaikh Wamis Shaikh Yunus, seeks release on bail, under section 483 of the Bhartiya Nagarik Suraksha Sanhita, in respect of C.R. no. 185/2025 at Pawarwadi Police station under sections 109, 189(2), 191(2), 191(3), 190, 351(2), 351(3), 352, 118 (1) and 118 (2) of the Bhartiya Nyay Sanhita, 2023 and sections 3/25, 5/25 and 7/25 of the Arms Act.

2. Learned Advocate for the accused submits that the entire FIR itself is not maintainable for the reason that it springs out from hearsay information gathered by the informant through his brother. It is contended that per FIR, informant reached at the spot and found his brother lying at the spot, but any of the accused was not found at the spot. It is contended that therefore complainant had neither seen any accused at the spot, nor has seen any accused assaulting or firing gun bullet on the injured.

3. Further contended that the FIR contains the name of accused Rabbanni and 4 unknown accused, and the names of these applicant accused are not in the FIR, therefore also false implication cannot be ruled out. Further submitted that the injured is now discharged from the hospital.

4. Further submitted that these accused are implicated in the offence, pursuant to the injured's statement recorded on 02.08.25. It is vehemently contended that injured's said statement is after-thought and false for the reason that, injured could have stated the names of these accused to his brother, even on the spot, while he stated the name of co-accused Rabanni. Also stated that even otherwise injured's statement merely states of these accused being present at

the spot, but no further role is attributed to them. Further stated that there are no allegations against these accused of having used any arms or weapons, therefore even nothing could be recovered from them.

5. Also stated that the clothes of these accused seized are not blood-stained, Test-Identification Parade of these accused is also not done, therefore involvement of these accused in the offence becomes doubtful. Also contended that there is no witness statement against these accused.

6. Also contended that even otherwise issue of common object, of these accused whether being a member of an unlawful assembly, shall be a matter for consideration at trial. Also submitted that investigation is completed, Charge-sheet is filed, these accused having no criminal antecedents. Thus, release on bail is contended.

7. Bail application is resisted by filing police say at Exh. 03 and the Ld. APP submitting that these accused knew about co-accused Rabbani to be a dreadful offender, but were alongwith him at the spot, during the time of occurrence; thus were a member of an unlawful assembly. Further argued that therefore, now the role of each member of the said unlawful assembly cannot be segregated, as the FIR alleges sharing of common intention, common object and accused's assembly being unlawful at the spot.

8. Ld. APP further submits that co-accused Rabbani has shot fire-arms at the victim, in an attempt to commit his murder, rendering him seriously and grievously injured. Also submitted that co-accused even assaulted injured Anees on his head, hands and legs by means of iron pipe.

9. Further submitted that even if Charge-sheet is filed, further investigation is yet continuing, as two accused are absconding and are yet to be traced and arrested. Further submitted that incase this accused is released on bail then pressurizing the informant and influencing the witnesses, cannot be ruled out. Accordingly, bail is resisted.

10. Upon perusing the bail application, the objection filed, copy of FIR, the charge-sheet and hearing the Ld. Advocate for the accused and the Ld. APP, it appears that the FIR is registered by the injured's brother, based upon the information shared to him by the injured. Indeed, FIR does not reveal of this informant to be the eye-witness to the occurrence or of having seen any accused at the spot.

11. Allegations of firing gun-shots are against co-accused Rabbani and not these accused-applicants. Further another co-accused Shaikh Shabbir @ Bire, is also alleged to have flashed a gun in the occurrence. These two accused Rabbanni and Shaikh Shabbir, are arrested. Two country-made fire-arms are recovered. As of now, these accused-applicants are not stated to be armed with any weapon. Charge-sheet, as of now accords mere presence, to these two accused-applicants at the spot.

12. Indeed, if injured could state the name of co-accused Rabbanni to his brother, while lying injured at the spot, he could also have told the name of these two accused-applicant to his brother; however, its implication shall be matter for consideration at trial.

13. Nonetheless, the very first statement of injured contains the names of these two accused-applicant. No doubt, much incriminating role does not appear to have been allocated to these

accused. Both these applicant accused appear to be under arrest since 31.07.25, fact that Charge-sheet is filed against them, implies that investigation stands completed qua them. Fact that some more co-accused are yet at large, they are to be traced and arrested; but settled position is that, this cannot be a ground to deny bail.

14. It is uncertain as to the time investigation agency shall consume to trace and arrest the absconding co-accused, complete the investigation against them and file the Supplementary Charge-sheet, trial to initiate and conclude. Therefore considering the meager role; rather mere presence attributed to these two accused-applicants, it appears that keeping these two accused arrested any further, shall not yield any fruitful purpose. However, apprehensions raised shall have to be taken care of by subjecting these accused to certain conditions. Hence, the following order.

ORDER

[1] Accused **Naeem Akhtar Abdul Kareem and Shaikh Wamis Shaikh Yunus**, be released on bail, from arrest in connection with C. R. no. **185/2025** registered at **Pawarwadi Police Station, Malegaon, Tal. Malegaon**, on their furnishing P. R. Bond of Rs. 50,000/- (Rs. Fifty Thousand only) **each**, with surety of the like amount on the conditions that :-

(a) Any accused shall not tamper the prosecution evidence and shall co-operate with the police machinery as and when required.

(b) Any accused shall not pressurize or influence the informant, the injured or any prosecution witness, so as to deter them, from giving evidence.

(Y. H. Ameta)

Additional Sessions Judge,
Malegaon.

Date : 26.11.2025