

Special Case No. 97 of 2024*The State Vs. Anil Ashok Khairnar +4***Order Below Exh.18.**

1. The applicant / accused **No.2 Bhagwan Ashok Khairnar** has preferred application, after filing of charge-sheet, under Section 483 of BNSS, 2023 for grant of bail in connection with CR No. 333/2024 registered at Chandwad Police Station, Dist, Nashik against him for the offences punishable under Sections 103(1), 118(1), 115, 189(2), 191(2), 191(3), 190, 352, 251(2) of Bhartiya Nyaya Sanhita, 2023 and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act., 1989. (Special Case No.97 of 2024).

2. Perused the application, charge-sheet and documents on record. It is the case of prosecution that applicant / accused Bhagwan Ashok Khairnar alongwith co-accused Anil Ashok Khairnar, Ashok Sadashiv Khairnar, Sau. Swati Anil Khairnar and Sau. Sonali Bhagwan Khairnar in prosecution of their common object, assaulted on the informant and his family members and committed murder of father of the informant Dagu Gangurde.

3. Learned Advocate for the accused / applicant vehemently submitted that the applicant / accused is falsely implicated in this crime. Allegations against him are not sufficient to attract Section 103(1) of BNS. Allegations against present applicant / accused that he abused the informant, caught him and scuffled with him. There was no intention or motive of the present applicant / accused to kill the deceased. Investigation of the crime is over, charge-sheet has been filed against the

accused in the Court. The accused has no criminal antecedents. His further detention behind the bars will amount to pre-trial conviction. He is ready to abide conditions of bail. Therefore, he prayed to grant bail to the accused.

4. On the other hand, learned APP resisted the application on the ground that the accused has committed a serious crime of murder. Accused was present on the spot. He was member of unlawful assembly and therefore, he is guilty of offence of murder committed by co-accused in prosecution of common object. The Medical Officer has opined that death of deceased is caused due to hemorrhagic shock due to stab injuries over chest and head injury due to blunt trauma over head which are sufficient to cause death in ordinary course of nature, individually and collectively. There are many eye-witnesses to the incident. Therefore, it cannot be said that the applicant / accused is falsely implicated in this crime. Capital Punishment is provided for the offence punishable under Section 103 of BNS. The accused may tamper with the prosecution evidence and may abscond, if released on bail. Therefore, he prayed to reject the application.

5. Upon hearing the learned Advocate, learned APP and on perusal of charge-sheet, it appears that there is cogent evidence against present accused / applicant is involved in the commission of crime of murder. It is the case of prosecution that on 03/09/2024 quarrel take place in between wife of the informant and accused no.1 over keeping the grass behind her house. On that count, in the night at about 08.00 p.m the said incident occurred. The accused were five in numbers. Therefore, it is crystal clear that they found unlawful assembly. Though accused no.1

Ashok gave blow of wooden log on the head of deceased and Anil gave blows of sharp iron weapon near ribs of the deceased. The prosecution has prima facie proved presence of the present applicant / accused at the spot of incident and his active participation in the crime, therefore, he is also guilty for the offence committed by co-accused. Section 190 of BNS reads as under :

190. Every member of unlawful assembly guilty of offence committed in prosecution of common object – If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

6. There is no substance in the arguments of learned Advocate for the applicant / accused that there was no intention / motive of the present applicants / accused to kill the deceased. There was previous enmity between the parties and quarrel had taken place between accused and the deceased. There are many eye-witnesses who had witnessed the incident. Medical Officer has opined that death of deceased is caused due to injuries sustained on his head and in the chest. The said injuries were ante-mortem. It is crystal clear that there is evidence against present applicant / accused for commission of murder of deceased.

7. Under these circumstances, there is substance in the arguments of learned A.P.P. that strong prima facie case has been made out against the accused. The accused may tamper with the prosecution witnesses if released on bail. Prima facie it appears that the accused has committed serious crime of murder. Capital punishment is provided for the

alleged offence punishable under Section 103 of BNS.

8. A feeling would gain ground in the citizenry that persons like applicant can commit the most outrageous acts and yet would be dealt softly by Courts. That indeed would be distressing. Larger the most interest of the society is also to be considered while deciding such applications. I, therefore, find that application is devoid of merits. Considering the nature of offence, the applicant / accused is not entitled to be enlarged on bail. In the result, I pass the following order.

ORDER

1] The application stands rejected.

(Dictated and pronounced in open Court.)

Date : 01/01/2025.

(A.V. Gujarathi)
Additional Sessions Judge,
Niphad.