

Order below Exh. 13 in Sessions Case No.79/2024
(CNR No. MHNS100014552024)

By filing this application under Section 227 of Cr.P.C., applicant-accused No.7 namely Nikita Vinod Kshirsagar has prayed for discharge in connection with CR No. 14/2024 registered with Chandwad police station for the offences punishable under Section 302, 120(b), 326, 324, 323, 504, 506, 143, 147, 148, 149 of Indian Penal Code and section 135 of The Maharashtra Police Act.

2. I have perused the application and the say of Ld. APP I have heard both the sides.

3. Following points arise for my determination and I have noted my findings against each of them for the reasons to follow :

POINTS	FINDINGS
1] Whether accused No.7 Nikita Vinod Kshirsagar is entitled for discharge ?	.. No.
2] What order ?	.. As per final order

REASONS

As to Point Nos.1 and 2 :

4. Case of the prosecution is as under :

(i) Informant namely Smt. Sheetal Raju Shinde lodged complaint to police that deceased Raju Kedu Shinde is her husband. The incident took place on 16.1.2024. On that day at about 10.00 a.m. Raju Kedu Shinde left the house to go to his office at Jai Janardan complex at Dugaon. On that day at about 1.30 p.m. informant and the co-wife of her husband Sunita were present in their house and at that time Raju Shinde made phone call to informant informing her that Chanchal Kshirsagar and his mother, brother and children and his wife and other

persons came near the complex and that because of the old dispute they were abusing him. On hearing such fact on phone, informant and co-wife of her husband Sunita went through motorcycle to their complex and at that time they saw that her husband Raju Shinde was surrounded by Chanchal Bhanudas Kshirsagar and his wife Vaishnavi Kshirsagar and his brother Vinod Bhanudas Kshirsagar and Vinod's wife Poonam and Chanchal Kshirsagar's two sons Raj and Sai and his younger brother Vinod Kshirsagar's daughters Nikita and Kashish and Chanchal's mother Babybai and Vaishnavi's nephew Piyush Sutar and that they all were abusing her husband. At that time she and the co-wife of her husband Sunita, her husband brother's wife Rupa Satish Shinde and her cousin brother-in-law Ravindra Santosh Mali, her cousin brother Yogesh Prakash Sonawane, uncle Prakash Sukdeo Sonawane and Dhondiram Kisan Gangurde, Dinesh Jagdale and Prashant Thorat intervened and removed her husband from them and at that time they (i.e. the abusers) went away from that place.

(ii) On the same day at about 2.30 p.m. informant along with her family members were present near their complex and at that time Chanchal Kshirsagar armed with iron rod and Vinod Bhanudas Kshirsagar armed with wooden stick, Vaishnavi Kshirsagar, Poonam Vinod Kshirsagar, Babybai Bhanudas Kshirsagar and Raj Sai, Nikita, Kashish and Piyush Sutar came there by abusing them and they stated "राजु तुला जिवंत ठेवणार नाही" (i.e. Raju, we will not leave you alive) and by saying so they ran to assault her husband Raju Shinde. At that time informant, the co-wife of her husband Sunita, her husband's elder brother's wife Rupa and Prasanna Thorat tried to intervene. At that time Piyush Satish Sutar thrust some sharp weapon into the left side chest of Raju Shinde and also gave blow with that weapon to the left arm and left wrist of Raju Shinde and thereby caused serious injury. At that time

Raj Chanchal Kshirsagar gave blow of knife to the middle portion of the head of Raju Shinde and thereby caused serious injury. At that time Prashant Thorat went there to intervene but he was also assaulted by Piyush Sutar with his weapon to his backside. Her husband Raju Shinde fell down and his shirt was smeared with blood. At that time informant and the co-wife of her husband Sunita and her sister-in-law Rupa Satish Shinde, her cousin brother-in-law Ravindra Santosh Mali, her cousin brother Yogesh Prakash Sonawane and her uncle Prakash Sukdeo Sonawane and Dhondiram Kisan Gangurde, Dinesh Jagdale rescued informant's husband from those assailants and at that time those assailants ran away from that place. Thereafter Raju Kedu Shinde was brought to Suvidha hospital Chandwad for medical treatment and the doctor examined him and declared him as dead. Thereafter dead-body of Raju Shinde was taken to Government hospital Chandwad and thereafter informant lodged her complaint to police and the aforesaid crime is registered.

(iii) Further statement of the informant was recorded on 20.01.2024. Her further statement shows that because of the brutal murder of her husband her mental condition was not good and therefore at the time of lodging complaint some facts remained to be stated by her and that after the funeral rites of her husband was over, she came to the police station to give her further statement. Her further statement shows that on 16.1.2024 at about 2.30 p.m. out of the accused persons who were armed with weapons and who came there with the preparation to kill her husband, Chanchal Bhanudas Kshirsagar and his elder brother Vinod Bhanudas Kshirsagar stated to their relative Piyush Satish Sutar "आम्ही राजाला पकडतो, तु वार कर". (We are catching Raj, you give blow.) Thereafter they both manhandled her husband and they both tightly caught both the hands of her husband and at that time

Piyush thrust the sharp weapon to the left side chest of informant's husband and thereby caused serious injury. Thereafter Sai Chanchal Kshirsagar gave blow of knife in the middle portion of the head of informant's husband and at that time Chanchal Kshirsagar gave blow of iron rod (Chimni) on the left hand and near wrist of informant's husband and thereby caused serious injury to her husband. In the meantime Vinod Kshirsagar assaulted her husband by fist and kick blows and he gave kick blow forcibly to the waist of her husband. Her husband fell down. At that time all the women whose names are mentioned in the complaint were instigating those four assailants "आज राजाला जिवंत ठेवु नका" (Today don't leave Raja alive) and thereby they were abetting and instigating. At that time she and co-wife of her husband made an attempt to rescue her husband. At that time Vaishnavi Chanchal Kshirsagar, Poonam Vinod Kshirsagar, Babybai Bhanudas Kshirsagar, Nikita Vinod Kshirsagar, Kashish Vinod Kshirsagar pushed them and manhandled them and also abused them.

(iv) In her further statement she further stated that in her complaint she mentioned that Raj Chanchal Kshirsagar gave blow of knife to the middle portion of head of her husband and thereby caused serious injury but Raj Chanchal Kshirsagar was not there. That person was Sai Chanchal Kshirsagar and that Sai Chanchal Kshirsagar gave blow of knife to the middle portion of head of her husband and thereby caused injury to her husband. At the time of lodging complaint her mental condition was not proper and therefore, she mentioned the name of Raj Chanchal Kshirsagar. But actually Raj Chanchal Kshirsagar was not present at the time and place of incident.

(v) Her further statement further shows that since last about 3 to 4 years the dispute in respect of land in between her husband at one

side and Chanchal Bhanudas Kshirsagar and Santosh Sukdeo Elinje at the other side was going on. In that respect crimes were also registered against each other in the police station and that proceedings were also going on in the Court and that because of that reason Chanchal Bhanudas Kshirsagar and Santosh Sukdeo Elinje got annoyed and that with the intention to take revenge, they in collusion with Chetan Uddhav Shevale published one defamatory video against her husband and her husband's family on social media through facebook in the first week of January 2024 and viralled that video. Thereafter on 11.1.2024 informant's husband inquired about that video from Chetan Shevale. At that time Chetan Shevale stated to her husband that he was not at all concerned with her husband but he further stated that Chanchal Bhanudas Kshirsagar and Santosh Sukdeo Elinje stated to him to do so and also supplied to him the documentary evidence. At that time her husband stated to Chetan Shevale about her husband's dispute with them and therefore Chetan Shevale told her husband that he would not send any post on social media against her husband and thereafter Chetan Shevale did not do anything. Chanchal Kshirsagar and Santosh Elinje came to know about this fact and thereafter Santosh Elinje posted following two posts on facebook :

- (i) "कोणीतरी घाबरला असेल किंवा नाही माहिती नाही पण आता स्वतः संतोष एलिनजे उदयापासुन लाइव येणार"
- (ii) "आज वर्षाचा पहिला सण दुश्मनालापण खावु दयावा. मकर संक्रांतीच्या हार्दिक शुभेच्छा".

Chanchal Bhanudas Kshirsagar and Santosh Sukdeo Elinje prior to Makar Sankrant hatched conspiracy to commit murder of her husband on the next day of Makar Sankrant and that thereafter they both after hatching the conspiracy committed the murder of her husband. She also produced the screen shot of the post viralled by

Santosh Sukdeo Elinje on the facebook and she also lodged complaint against Santosh Sukdeo Elinje.

5. It is argued by the Ld. Advocate for the accused that allegation against applicant-accused is that she along with other accused abused the deceased but admittedly it is the case of prosecution that there was dispute of property since prior to the said incident. There was no motive for accused persons to commit the murder of the deceased. While applicant-accused heard sound of her father and her brother, at that time she went to the spot of incident. No specific allegation is there against applicant-accused. Omnibus allegation is there against applicant-accused. Apart from that counter FIR is lodged by Vaishnavi under Section 354 of IPC against informant and her family members. Actually there was dispute between the deceased and Chanchal Kshirsagar but applicant-accused is falsely implicated. At the time of incident she was present in the room and thereafter police came there and they informed them about the incident. Her involvement is not there in the said crime. It is therefore, submitted that applicant-accused may be discharged. In support of his argument, he has relied upon the authority in the case of **Dhirubhai Bhailalbai Chauhan & Anr. vs. State of Gujrat & Ors. Criminal Appeal No. 816 of 2016**. In para Nos.13 and 15 of this authority, the Hon'ble Supreme Court observed as under :

“13. In cases of group clashes where a large number of persons are involved, an onerous duty is cast upon the courts to ensure that no innocent bystander is convicted and deprived of his liberty. In such type of cases, the courts must be circumspect and reluctant to rely upon the testimony of witnesses who make general statements without specific reference to the accused, or the role played by him. This is so, because very often, particularly when the scene of crime is a public place, out of curiosity, persons step out of their home to witness as to what is happening around. Such persons are no more than bystander though, to a witness, they may appear to be a part of the unlawful assembly. Thus,

as a rule of caution and not a rule of law, where the evidence on record establishes the fact that a large number of persons were present, it may be safe to convict only those persons against whom overt act is alleged. At times, in such cases, as a rule of caution and not a rule of law, the courts have adopted a plurality test, that is, the conviction could be sustained only if it is supported by a certain number of witnesses who give a consistent account of the incident.

15. In the instant case, the appellants were residents of the same village where riots broke out, therefore their presence at the spot is natural and by itself not incriminating. More so, because it is not the case of the prosecution that they came with arms or instruments of destruction. In these circumstances, their presence at the spot could be that of an innocent bystander who had a right to move freely in absence of prohibitory orders. In such a situation, to sustain their conviction, the prosecution ought to have led some reliable evidence to demonstrate that they were a part of the unlawful assembly and not just spectator. Here no evidence has come on record to indicate that the appellants incited the mob, or they themselves acted in any manner indicative of them being a part of the unlawful assembly. The only evidence in that regard came from PW-2 and PW-4, but that has been discarded by the High Court for cogent reasons which need not be repeated here. In our view, therefore, on basis of their mere presence at the scene of crime, an inference could not have been drawn that the appellants were a part of the unlawful assembly.”

6. On the other hand, it is argued by the Ld. APP that perusal of FIR shows that at the time of first incident all the accused along with applicant-accused were abusing the informant and at the time of second incident on the same day applicant-accused also came along with co-accused and they stated “राजु तुला जिवंत ठेवणार नाही” (i.e. Raju, we will not leave you alive today) and thereafter informant’s husband was assaulted by the other co-accused. Involvement of the applicant-accused is there. It is further submitted that application may be rejected.

7. Considering the nature of the allegation and the role attributed to the applicant-accused that she along with other co-accused was also present on 16.1.2024 at about 1.30 p.m. when the first incident took place and at that time all the accused were abusing the

informant's husband and that on the same day at about 2.30 p.m. all the accused including applicant-accused came there and at that time some accused were armed with iron rod and sharp weapon and knife and that at that time all the accused stated to the informant that "राजु तुला जिवंत ठेवणार नाही" (i.e. Raju, we will not leave you alive today) and thereafter co-accused assaulted informant's husband with sharp weapon and knife and that as a result of which informant's husband died and that further statement of informant shows that all women accused whose names are mentioned in the complaint were instigating those four assailants i.e. Chanchal Bhanudas Kshirsagar, Vinod Bhanudas Kshirsagar, Piyush Satish Sutar and Sai Chanchal Kshirsagar not to leave Raj (i.e. the deceased) alive today and they were also manhandling and abusing informant and other witnesses, I am of the view that prima facie involvement of the present applicant-accused is there in the said crime. Applicant-accused is not entitled to be discharged. My answer as to Point No.1 is 'No'. My answer as to Point No.2 is 'As per final order'. For the reasons stated above, application should be rejected. Hence, I pass following order :

ORDER

1. Application (Exh.13) for discharge is rejected.

Date : 22.09.2025
Place : Niphad

(Abdussalam A.A.Shaikh)
Additional Sessions Judge,
Niphad.