

Order Below Exh.2

In present case, the Mahalunge MIDC Police Station has charge sheeted the accused nos. 1 to 8 for the offences punishable under sections 103(1), 109, 238, 249, 3(5), 61(2) of Bhartiya Nyay Sanhita, section 3(25) of Indian Arms Act and section 37(1)(3) read with section 135 of Maharashtra Police Act and sections 3 and 7 of Criminal Law Amendment Act.

2] The accused no.7 Chandrakant Bhimrao Tulave has filed this application for grant of bail as per section 483 of BNSS.

3] It is contention of accused that he is innocent and falsely implicated without having any nexus in the alleged crime. There is no material to connect him with the alleged crime. He was not present at the place of incidence. There is no material on record to point out conspiracy to kill the deceased. There is no any motive on his part. Nothing is recovered at his instance. No overt act attributed him. The statement of the witness that the present accused and other co-accused were seen while discussing something is not sufficient to establish criminal conspiracy.

4] The prosecution opposed this application on grounds that this accused provided his motorcycle to other co-accused for committing the crime and said motorcycle was seized from the place of incidence and said motorcycle was used while committing the crime and his tower location was within adjacent area of the place of

incidence and the present accused and other co-accused were coming together at the rented room of co-accused and they hatched conspiracy in the said room and there are witnesses who stated that all the accused used to meet there, therefore, present accused is involved in the crime and there are criminal antecedents of this accused and there is possibility of tampering witnesses.

5] The informant also appeared sue-motu and opposed this application by filing reply.

6] Heard both the sides. Perused investigation papers.

7] On perusal of allegations made in FIR, it appears that the informant and deceased were proceeding on motorcycle from Chakan to Talegaon Dabhade road. At that time, co-accused no.1 and one unknown person assaulted them by means of skythe. During course of investigation, it is revealed that the other person was accused no. 2 and co-accused nos. 3 to 5 came by rickshaw there and co-accused no. 3 also assaulted the deceased to confirm his death by skythe. There are statements of witnesses to show that the present accused and co-accused used to come together at one room and they were discussing on the point of conspiracy. It appears that the motorcycle used while committing the crime belongs to the wife of present accused. Therefore, prima facie it appears that the present accused is involved in the alleged crime. At this stage, the statements of witnesses cannot be disbelieved.

8] On behalf of accused, reliance is placed on the judgment

of Hon'ble Bombay High Court in case of **Mrutyunjay Patole Vs. State of Maharashtra reported in AIR Online 2021 BOM 2514**. In the case before the Hon'ble High Court, there was only statement of one witness that the accused was found in the company of other accused persons and they were discussing something. However, in present case, there is recovery of motorcycle used in the alleged crime which belongs to the wife of accused and there are statements of witnesses that the present accused and other co-accused oftenly used to come coming together at one place prior to the alleged incidence. Therefore, the facts of the case before the Hon'ble High Court and facts of the present case are not similar. On behalf of accused reliance is also placed on judgments of the Hon'ble Bombay High Court in case of **Radha Digamber Vs. State of Maharashtra reported in AIR Online 2021 BOM 4038** and in case of **Karan Vs. State of Maharashtra reported in AIR Online 2022 BOM 846**. But the facts of the cases before the Hon'ble High Court and facts of the present case are not similar. On behalf of accused reliance is also placed on judgments of Hon'ble Supreme Court in case of **Altaf Vs. State reported in AIR Online 2022 SC 541** and in case of **John Vs. State reported in (2010) 4 CURCRIR 474**. However, the facts of the cases before the Hon'ble Supreme Court and facts of the present case are not the similar. Therefore, the application is liable to be rejected. Hence, I pass following order -

ORDER

- 1) Application at Exh. 2 filed by the accused no. 7 Chandrakant Bhimrao Tulave is rejected.

- 2) The copy of order and copy of reply filed by the prosecution be given to the accused no. 7 free of costs.
- 3) The accused has right to challenge this order by filing appropriate proceeding before the Hon'ble Bombay High Court, Mumbai and free legal aid is available if he is entitled for the same.
- 4) The cover sheet setting out the contact address and phone number of the Legal Aid Services Authority be annexed to the order.
- 5) Inform to the concern Police Station.

Khed.
Date: 08.11.2024

(S. P. Pol)
Addl. Sessions Judge,
Khed-Rajgurunagar,
Dist. Pune.

**Cover Sheet as per the direction of Hon'ble Supreme Court of India
Writ Petition No. 1082 of 2020 Suhas Vs. Union of India.**

It is informed to the accused that free legal aid facility for pursuing higher remedy before the Hon'ble Bombay High Court at Mumbai to challenge the order passed in the present case. The contact address and phone number of the Legal Aid Services Authority is as under -

Address :

District Legal Services Authority, Pune
District Court Premises, New Building First Floor,
Shivajinagar, Pune - 411005.

Contact :

Phon No. 020-025534881, Mob. 8591903612
Email- pune-dlsa.mh@bhc.gov.in/dlsapune2@gmail.com
NALSA Helpline Number 15100
Apply Online - <http://www.nalsa.gov.in/lams>

Pune.

Date: 08.11.2024

(S. P. Pol)
Addl. Sessions Judge,
Khed-Rajgurunagar,
Dist. Pune.

CERTIFICATE

“I affirm that the contents of this P.D.F. file order are same word for word as per original order.

Name of steno	:	Smt. P. P. Deo (Stenographer Grade-I)
Court Name	:	Shri. S.P. Pol, Addl. Sessions Judge, Khed-Rajgurunagar, Dist. Pune.
Date of order	:	08/11/2024.
order signed by	:	
Presiding Officer on	:	11/11/2024.
order uploaded on	:	11/11/2024.