

Order Below Exh.31

In present case, the Mahalunge MIDC Police Station has charge sheeted the accused no.1 to 8 for the offences punishable under Sections 103(1), 109, 238, 249, 3(5), 61(2) of Bhartiya Nyay Sanhita, Section 4(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.8 Vikas Pandurang Tulave has filed this application for grant of bail as per Section 483 of BNSS.

3] It is contention of accused that he has been falsely implicated and he is not concerned with the alleged crime. He was arrested on 03/07/2024 and was produced before the Court of Judicial Magistrate First Class on 04/07/2024. He was remanded in Police custody till 10/07/2024. However, in remand application or order nowhere it is mentioned the particulars of the offence for which he was arrested or other grounds of such arrest. As per Section 47 of BNSS informing the grounds of arrest is a constitutional mandate. 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. No any criminal antecedents against him. He will not tamper or hamper with prosecution witnesses.

4]            The prosecution opposed this application on grounds that the present accused and other co-accused used to come together at the rented room and they hatched conspiracy in the said room. In memorandum of panchnama dated 09/07/2024 it is mentioned that the applicant was involved in the discussion on point of conspiracy. The accused used weapon while committing the crime and gave memorandum regarding the shop from where said weapon was purchased. There was old dispute between the accused, co-accused and deceased on the ground of sale of loose soil. Earlier this accused and other co-accused had been to the house of deceased to kill him with weapons. There is statement of one witness who had seen the accused while talking about conspiracy to kill the deceased.

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. 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] It is submitted on behalf of accused that the statement of witness Sachin Sonawane came to be recorded on 05/07/2024. It means statement of this witness is recorded after arrest of the present accused. The accused was arrested on 03/07/2024. At the time of arrest there was no any evidence against the accused. So also the grounds of arrest were not communicated to the accused at the time of his arrest. Therefore, there is no compliance of Section 47 of BNSS in the present case. Therefore, the accused is entitled to be acquitted.

9] On behalf of prosecution, it is submitted that at this stage, only the prima facie case is to be seen. There are several circumstances against the accused to show that the accused is involved in the alleged crime. The alleged offences are serious and the manner in which alleged incidence took place is brutal. All the accused have hatched criminal conspiracy to commit the murder of deceased. There is witness who heard the discussion amongst the accused regarding the conspiracy. The arrest of the accused is justified.

10] In order to ascertain whether there is compliance of Section 47 of BNSS, I have carefully gone through the charge-sheet. It appears that the accused was arrested on 03/07/2024. There is arrest memo of the accused dated 03/07/2024. On perusal of arrest memo it appears that there is no mentioning of particulars of the offence or grounds of arrest. Only information regarding arrest of

accused was communicated to his wife Vandana Vikas Tulave as per Section 48 of BNSS. On perusal of remand report dated 04/07/2024, it appears that it is mentioned therein that while investigation of the crime was going on this accused and other co-accused were arrested at the bottom of Bhandara Dongar. Their involvement in the crime was revealed. However, no grounds of arrest are mentioned in the report.

11] On behalf of accused reliance is placed on following judgments:

- i] In case of **Pankaj Bansal Vs. Union of India & ors. [ Criminal Appeal No. 3051/2023 ]**.
- ii] In case of **Prabir Purkayastha Vs. State (NCT of Delhi) [D. No. 42896/2023 decided on 15/05/2024]**.
- iii] In case of **Vihaan Kumar Vs. State of Haryana & anr. [Criminal Appeal arising out of Special Leave Petition (Crl.) No.13320/2024]**.
- iv] In case of **Directorate of Enforcement Vs. Subhash Sharma [Criminal Appeal arising out of Special Leave Petition (Crl.) No.1136/2023 decided on 21/01/2025]**.
- v] In case of **Sakib Choudhary Vs. State of Assam [Bail Application No. 629/2025]**.
- vi] In case of **Gurkaran Singh Dhaliwal Vs. State of Punjab & ors. [ CRWP No. 2396 of 2025 (O & M) decided on 11/03/2025]**.
- vii] In case of **Sachin Mahipati Nimbalkar Vs. State of Maharashtra [Writ Petition (Stamp) No. 17029 of 2024]**.

12] In case of **Pankaj Bansal Vs. Union of India** (cited supra), it is held that the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended

purpose. In case of **Prabir Purkayastha Vs. State ( NCT of Delhi)** (cited supra), it is held that hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 21(1) and 22(5) of the Constitution of India sacrosanct and cannot be breached under any situation. In case of **Vihaan Kumar Vs. State of Hariyana** (cited supra), it is held that Section 50 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him. The other grounds for such arrest referred to in Section 50(1) have nothing to do with the grounds of arrest referred to in Article 22(1). The requirement of Section 50 is in addition to what is provided in Article 22(1). Section 47 of the BNSS is corresponding provision. Therefore, what we have held about Section 50 will apply to Section 47 of the BNSS. In case of **Directorate of Enforcement Vs. Subhash Sharma (cited supra)**, it is held that once a court while dealing with a bail application finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution. In case of **Sakib Choudhary Vs. State of Assam** (cited supra), the Hon'ble Gauhati High Court held that if there is any non compliance with this constitutional mandate, the Magistrate cannot remand the accused to custody, the only option

available in such a case is to grant bail. In case of **Gurkaran Singh Dhaliwal Vs. State of Punjab & ors.** (cited supra), the Hon'ble Punjab and Haryana High Court held that after a lapse of 07 hours from the detenu's initial custody that he was informed of the grounds of his arrest vide memo of arrest, that too in the presence of the Warrant Officer. It is in clear contravention of the principles laid down in **Vihaan Kumar's case (supra)**. In case of **Sachin Mahipati Nimbalkar Vs. State of Maharashtra** (cited supra), the Hon'ble Bombay High Court held that so far as ground being communicated through the remand application is concerned the grounds in this regard is now well settled. It is the requirement of Section 50 of the Cr.P.C that an accused who is being arrested without warrant to be forthwith communicated about the full particulars of the offence for which he is arrested or the other grounds for such arrest.

13] After considering the principles laid down in the judgments of the Hon'ble Supreme Court (cited supra) and the judgments of the Hon'ble High Court (cited supra), the facts appearing in charge-sheet as mentioned in forgoing paragraphs, it can be said that the grounds of arrest were not communicated to the accused in writing at the time of his arrest and there was no proper compliance as per the provisions of Section 47 of Bhartiya Nagarik Suraksha Sanhita in present case. Therefore, accused is found entitled for grant of bail. In such circumstances accused can be released on bail by imposing certain conditions in order to rule out the possibility of tampering with witnesses -

**ORDER**

1. Application at Exh. 31 is allowed.

2. The accused no.8 **Vikas Pandurang Tulave**, be released on bail on execution of his P. R. Bond of Rs.30,000/- with one surety in the like amount in respect of Crime No. 419/2024 registered with the Mahalunge MIDC Police Station for the offences under Sections 103(1), 109, 238, 249, 3(5), 61(2) of Bhartiya Nyay Sanhita, Section 4(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, with following conditions:-
- i) The accused shall not enter within the jurisdiction of Mahalunge MIDC Police Station and Chakan Police Station till conclusion of trial.
  - ii) The accused shall remain present at Alandi Police Station on first day of each month in between 6:00 p.m. to 7:00 p.m., till conclusion of the trial.
  - iii) The accused shall not try to contact with informant and three witnesses in any manner.
  - iv) The prosecution is at liberty to seek cancellation of bail till accused commit breach of any condition.
3. Inform to concerned Police Station.

Pune.  
Date: 01/04/2025

( 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	:	01/04/2025.
order signed by	:	
Presiding Officer on	:	01/04/2025.
order uploaded on	:	01/04/2025.