

ORDER BELOW EXH. 70

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 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.4 Pratham Suresh Dive has filed this second application for grant of bail as per Section 483 of BNSS.

3] It is contention of accused that he has not committed any crime. His active participation is not there. The alleged offences are not attracted against him. Investigation is completed. He was arrested on 03/07/2024. The grounds of arrest were not communicated to him. There is no specific role attributed to him.

4] The prosecution opposed this application on grounds that alleged crime is serious. Notice as per section 47(1)(ii) of BNSS was not issued, but at the time of arrest reasons for arrest and right of bail were stated to the accused and Station Diary no. 38 is recorded. The present accused and co-accused Rajnit Ovhal have took the Auto Rikshaw co-accused Sunny Tulave and it appears in CCTV footage and eye witness identified him during test identification parade.

5] Heard both the sides. Perused investigation papers.

6] 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 scythe. 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 scythe. 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 is revealed during course of investigation that the motorcycle used by the accused nos. 1 and 2 belong to accused no.7 and Rickshaw belong to present accused. There is CCTV footage showing the Auto Rickshaw was taken from the house of this accused by co-accused nos. 3 to 5 before the commission of crime and same was used during the course of commission of crime. 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.

7] It is submitted on behalf of accused that the accused was arrested on 03/07/2024. At the time of arrest the grounds of arrest were not communicated to the accused. Therefore, there is no compliance of Section 47 of BNSS in the present case. Therefore, the accused is entitled to be acquitted.

8] 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.

9] 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 relative as per Section 48 of BNSS. The station Diary no. 38 only discloses that grounds of arrest and information to the relative was communicated to the accused. But, what grounds were communicated are not mentioned in station diary.

10] 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].

11] 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.PC 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.

12]      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. 71 is allowed.
2. The accused no. 4 Pratham Suresh Dive, 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: 03/06/2025

( 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	:	Shri. S. S. Shirode (Stenographer Grade-II)
Court Name	:	Shri. S.P. Pol, Addl. Sessions Judge, Khed-Rajgurunagar, Dist. Pune.
Date of order order signed by Presiding Officer on order uploaded on	:	03/06/2025. 03/06/2025. 03/06/2025.