

: ORDER BELOW EXH.4 IN SESSIONS CASE NO.16/2025 :
(CNR No. MHRG15-000276-2025)
(Passed on 16.04.2025)

1) The present application is filed by applicant/accused under section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for regular bail, in respect of Crime No.114/2024, registered with Mhasla police station for the offence punishable under section 109, 118(2), 115(2), 189(2), 190, 191 of Bharatiya Nyaya Sanhita, 2023.

2) The applicant contended that he is permanently residing at the address mentioned in the cause title of the application. He has not committed any offence.

3) He further contended that on 02.12.2024 complainant Irfan Riyaj Jamdar aged about 29 years, lodged report alleging therein that on 02.12.2024 he alongwith Imtiyaj Abdul Ajij Gharatkar and Salim Mujafar Ghansar by WagonR Car bearing registration No.MH-01/NA-7431 had gone to bring tiles at Mangaon. After completing their work, in the evening at about 8.00 p.m. they proceeded from there. At about 8.30 p.m. they came at Ghonase Ghat Nivachiwadi cross. There they saw that Innova, Ertiga and Duster car were standing on the road in on condition and there was quarrel between the persons of said car. They parked their car and alighted from the car. Imtiyaj Gharatkar sat in the car. They went at said place. At that time, 5 persons of Renault Duster Car bearing registration No.MH-14/DX-2743 were assaulting Mujjamil Majid Shekhdare and Arsalan Damad. They went to rescue them. They tried to give

understanding to the said 5 unknown persons. They five unknown persons assaulted them by fist and blows. At that time, the unknown person wearing light orange colour design shirt took the stone, which was lying on the road and assaulted on the head of Salim Mujafar Ghansar. Due to which he fall down and sustained injuries to his head. The five persons thereafter assaulted him by fists & blows. At that time, he went to rescue him. They also assaulted him. Thereafter, the person wearing light orange shirt again picked up the stone and by saying that he will kill him, again assaulted him on his head. Thereafter the five unknown persons by sitting in Duster Car went towards Mangaon.

4) The applicant further contended that he has been arrested on 03.12.2025. The investigation of the offence is completed. Therefore, nothing is to be recovered or discovered at his instance. The role played by him in the offence is that he had only assaulted the informant and witness by fists and blows. The material shows that nothing is to be recovered or discovered at his instance and prayed that he may be released on regular bail.

5) Ld. A.P.P. filed his say at Exh.5. He contended that the offence is serious in nature. The applicant alongwith co-accused had formed an unlawful assembly. The members of unlawful assembly had tried to cause death of victim. He further contended that if the applicant is released on regular bail, there are chances that he may pressurize the witnesses and tamper the evidence of prosecution. He prayed that the application be rejected.

6) Heard Ld. advocates appearing for parties.

7) The Ld. Advocate appearing for the applicant submitted that the Investigating Officer while arresting applicant had not complied the mandatory provisions of section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023. Therefore, the arrest of applicant is illegal arrest. He further submitted that the investigation is completed. Therefore, nothing is to be recovered or discovered at the instance of applicant. He prayed that the application be allowed.

8) The Ld. A.P.P. appearing for the State submitted that the applicant has not specifically pleaded the grounds of illegal arrest in his bail application. Therefore, while arguing the application, the applicant cannot take the ground of non-compliance of section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023. He further submitted that the offence committed by the applicant is serious in nature and if applicant is released on regular bail, there are chances that he may pressurize the witnesses and tamper the evidence of prosecution. He prayed that the application be rejected.

9) On perusal of material, available on record, it appears that the report is lodged by the informant on 02.12.2024 contending therein that on 02.12.2024 he alongwith Imtiyaj Abdul Ajij Gharatkar and Salim Mujafar Ghansar by WagonR Car bearing registration No.MH-01/NA-7431 had gone to bring tiles at Mangaon. After completing their work, in the evening at about 8.00 p.m. they proceeded from there. At about 8.30 p.m. they came at Ghonase Ghat

Nivachiwadi cross. There they saw that Innova, Ertiga and Duster car were standing on the road in on condition and there was quarrel between the persons of said car. They parked their car and alighted from the car. Imtiyaj Gharatkar sat in the car. They went at said place. At that time, 5 persons of Renault Duster Car bearing registration No.MH-14/DX-2743 were assaulting Mujjamil Majid Shekhdare and Arsalan Damad. They went to rescue them. They tried to give understanding to the said 5 unknown persons. They five unknown persons assaulted them by fist and blows. At that time, the unknown person wearing light orange colour design shirt took the stone, which was lying on the road and assaulted in the head of Salim Mujafar Ghansar. Due to which he fall down and sustained injuries to his head. The five persons thereafter assaulted him by fists & blows. At that time, he went to rescue him. They also assaulted him. Thereafter, the person wearing light orange shirt again picked up the stone and by saying that he will kill him, again assaulted him on his head. Thereafter the five unknown persons by sitting in Duster Car went towards Mangaon.

10) The Ld. Advocate appearing for the applicant has raised the ground of non-compliance of section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 at the time of hearing of the application. The Ld. A.P.P. has opposed the said ground. The Investigating Officer is also present in the Court. The material available in the charge-sheet shows that the notice under section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 is not annexed in the charge-sheet. The copy of said notice is also not with the Investigating Officer. The material shows

that the mandatory provisions of section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 has not been followed by the Investigating Officer while arresting the applicant/accused. The Ld. A.P.P. appearing for State has taken the objection stating that the said ground is not mentioned in the bail application. The ground raised by the Ld. Advocate for applicant of non-compliance of provisions of section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023, is a legal ground, which can be agitated at the time of hearing the application. Therefore, there is no substance in the argument canvassed by the Ld. A.P.P. that the ground which are not mentioned in the bail application, cannot be agitated at the time of hearing of application. The material shows that the mandatory requirement of section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 has not been followed by the Investigating Officer while arresting the applicant/accused. Therefore, the arrest of applicant is illegal, as held by the Hon'ble Supreme Court in **Prabir Purkayastha Vs. State (NCT of Delhi)**, reported in 2024 CRI. L.J. 2450 SUPREME COURT and **Vihaan Kumar Vs. State of Haryana & Anr.**, passed in Special Leave Petition (Crl) No.13320/2024. Therefore, in view thereof I proceed to pass following order :-

: O R D E R :

- 1) The application is allowed.
- 2) The applicant/accused **Nikesh Prakash Shinde** be released on regular bail in Crime No.114/2024, registered with Mhasla police station for the offence punishable under section 109, 118(2), 115(2), 189(2), 190, 191 of Bharatiya Nyaya Sanhita, 2023, on

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his executing P.B. of Rs.25,000/- (Rs. Twenty five thousand only),
with one solvent surety in like amount.

- 3) The applicant shall not pressurize the witnesses or tamper the evidence of prosecution.
- 4) Violation of any condition will entail for cancellation of bail.

(Dictated and pronounced in open Court)

Mangaon.
Date : 16.04.2025.

(H. K. Bhalerao)
Additional Sessions Judge,
Mangaon-Raigad