

MHRG170019592024	Sessions Case No. 115/2024
	State of Maharashtra ... Prosecution Vs. Tahir Yusuf Shaikh and other ... Accused

ORDER BELOW EXH. 8

- 1] This is an application filed by **accused No.2 –Yusuf Ahmad Shaikh** under Section 439 of the Code of Criminal Procedure, (in short “Cr.P.C.”) for grant of bail.
- 2] I.O. has filed say at Exh.9 to this application and thereby strongly opposed the application.
- 3] Perused application, say thereon and documents produced on the record. Heard both sides.
- 4] The accused persons are charge-sheeted for the offences punishable under Section 302, 323, 504 read with 34 of the Indian Penal Code.
- 5] Ld. Advocate for accused No.2 submitted that the applicant is suffering from diabetics, high cholesterol and under gone treatment for cataract. Therefore, regular medicine is required, which is not available in the judicial custody. There is non-compliance of Section 50 and 50-A of the Code of Criminal Procedure. In view of law laid down by the Hon’ble Supreme Court in **Pankaj Bansal V/s. Union of India** the grounds of arrest must be communicated to accused in writing. There is violation of the mandatory provision of Section 50 and 50-A of the Cr.P.C. These grounds were not argued at the time of first bail application. Hence

this is the second bail application on the ground of change in circumstances. Arrest of the accused No.2 is illegal. Court dealing with bail application has to consider the illegal arrest. If arrest is illegal it is duty of the Court to forthwith order release of the accused. The Ld. Advocate for accused to buttress his argument relied upon following authority.

1] Vihaan Kumar V/s. State of Maharashtra, Criminal Appeal arising out of Special Leave Petition (Crl.)No. 13320 of 2024, dated 06/02/2025

6] Ld. Addl. P. P. Shri. Bhopi submitted that offence is of serious nature. Grounds of arrest were communicated to the applicant/accused orally. There is sufficient compliance of Section 50 and 50-A of the Cr.P.C. The first bail application was rejected. There is no change in circumstances for filing this second bail application. The application itself is not maintainable. If the accused/applicant is released on bail will pressurize the prosecution witnesses. Hence, prosecution prayed for rejection of bail.

7] Perused application, say and record of the case. The informant Maina Khatu Ali Shaikh is the resident of Arjun Seth Chawl, Patilwadi, Tal. Parnel, District-Raigad. The deceased Sameer Shaikh is the son of the informant's brother-in-law i.e. brother of her husband. Deceased was staying with his father and mother at Devichapada. Adjacent to informant's house Aliya Yusuf Shaikh aged about 17 years is residing. Deceased Sameer used to come at informant's home frequently. Therefore, deceased was got

acquainted with Aliya. Subsequently, their relation developed into friendship. On 01/06/2024 at about 3.30 informant was at her home, at that time Aliya informed her that, Sameer was called by her at home. Aliya and Sameer were inside the room. Aliya's brother Tahir Shaikh came at the home and he opened the door by kick. He got annoyed on seeing Aliya and deceased together. The applicant Yusuf is the father of the Aliya. He was called by his son Tahir. They both started hitting the deceased Sameer with iron spade and iron long sickle. When the said things were told by the Aliya to the informant, informant reached at Aliya's house. At that time Tahir was hitting the deceased with iron spade on head, legs and back and he was also loudly abusing the deceased. Yusuf was also hitting the deceased by iron long sickle. When informant intervened Tahir Shaikh kicked her on stomach. Therefore, she ran away from there. Thereafter, the neighbour woman made phone call on 112 and called the police. Thereafter, deceased was taken at hospital for treatment. However during treatment he succumbed to the injury. Therefore, the informant lodged report to police station.

8] On perusal of record of the case it appears that, the earlier bail application was rejected by my Ld. Predecessor on 15/02/2025.

9] The main ground of the present bail application is that, there is non-compliance Section 50 and 50-A of the Cr.PC. This is the second bail application filed on the ground of change in circumstances that the grounds which are raised during the course of this argument were not raised in earlier bail application. In

Vihaan Kumar (supra) the Hon'ble Supreme Court held that, "*the grounds of arrest must be informed in a language which the arrestee understands. That is how, in the case of **Pankaj Bansal**, this court held that the mode of conveying the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. However, under Article 22(1), there is no requirement of communicating the grounds of arrest in writing.*"

10] In **Yogesh Ramesh Tonde V/s. State of Maharashtra**, Hon'ble Bombay High Court, Nagpur Bench held that, "*In view of the requirement of informing the person arrested, which is held by the Hon'ble Apex Court in the case of **Vihaan Kumar V/s. State of Haryana and anr**, the same is not a formality, but a mandatory constitutional requirements. It further states that the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. The Hon'ble Apex Court further clarified that under Article 22(1) of the Constitution, there is no requirement of communicating the grounds of arrest in writing. The purpose of Article 22(1) of the Constitution is that the right of every person arrested to consult an advocate of his choice and the right to be defended by an advocate. The said purpose appears to be fulfilled as sufficient information by giving the notice to the applicant.*"

11] In this case the charge-sheet is filed on 31/08/2024. Arrest memo of the present applicant/accused is also filed along with charge-sheet. On perusal of arrest memo in column number 8 it is mentioned that after informing the grounds of arrest to the

applicant/accused, he was arrested on 14/06/2024. It is also mentioned that the information of arrest was also given to his wife Asmat Yusuf Shaikh. The point of non-compliance was not raised by the accused at the time of remand and in earlier bail application. Hence, I find that there is sufficient compliance of Section 50 and 50-A of the Cr.P.C.

12] The another ground of bail application is that the applicant/accused suffering from diabetics and other ailments, which requires medical care which is not available in the judicial custody. However, nothing is on record to show that medical facility provided by the jail authority is not sufficient. Hence, the applicant is not entitled for bail on medical ground.

13] The arrest memo was filed along with charge-sheet. There is no change in circumstances. Nothing has been newly happened from the rejection of the first application till filing of this second bail application. In State of **Madhya Pradesh V/s. Kajad, reported in 2001 ALL MR (CRI) 2172(SC)**, the Hon'ble supreme Court held that, "*successive bail applications are permissible under the changed circumstances. But, without change in circumstances second bail application would be deem to be seeking review of earlier judgment which is not permissible under criminal law.*" Hence, in view of this legal position second bail application of the applicant is not maintainable.

14] Thus, grounds mentioned in the bail application are not justified. The offence is of serious nature. Hence, I am not inclined

to grant this bail application. Therefore, I proceed to pass following order.

:: ORDER ::

1	Application (Exh.8) is rejected.
2	Inform the concerned police station and jail authority, accordingly.

Panvel,
Dated :- 30/09/2025

(S. R. Chavan)
Addl. Sessions Judge
Panvel, Dist.-Raigad