

CNR MHSI01-000448-2025

State of Maharashtra vs. Sitaram Rathod etc.



ORDER BELOW EXH.5

1. Accused No. 3 has filed this application under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 for enlargement on the bail. The accused is charge-sheeted for the offence punishable under Sections 103(1), 238 and 61(2)(a) of the Bharatiya Nyaya Sanhita, 2023.
2. Notice was issued to the respondent. Learned P.P. filed say at Exh.8.
3. According to accused No.3, there is no prima facie evidence produced on record to show that the applicant is involved in commission of alleged offence. Charge-sheet is filed in the Court and there is no need of accused for investigation as investigation is completed. Accused is falsely implicated in this case. The prosecution case is based on circumstantial as well as hearsay evidence. The applicant is 19 years old and only earning member in his family. Applicant is educated and no criminal antecedents against him. It is the settled position of law that bail is rule and jail is an exception. If accused is released on bail, he would not be abide by the conditions imposed, if any. Hence, prayed to release him on bail.
4. According to the prosecution, the offence is of serious nature and sensitive. It is preplanned crime. Important witnesses are under fear and if accused is released on bail there is danger to the lives of witnesses. All the accused were absconded after commission of offence and they are apprehended with the help of Local Crime Branch. If he is released on

bail there is possibility of his absconding. There is cogent evidence against accused. Accused No. 3 is resident of Karnataka state and if he is released on bail there is possibility that he would not attend the Court. If accused is released on bail the possibility of committing the same kind of serious offence by the accused cannot be ruled out. Hence, application be rejected.

5. Heard Learned Adv. Shri. Bile for applicant/accused No.3 and learned P.P. Shri. S. A. Rane for the State. Learned Adv. Bile has relied upon following case-laws:

- i. **Raju Gupta vs. State of Maharashtra, Bail Application No.1406/2022.**
- ii. **Prabhakar Tewari vs. State of U. P. & Anr. Cri. Appeal No.153/2020.**
- iii. **Yudhveer Yadav v. Central Bureau of Investigation Bail Appln. 3015/2024.**
- iv. **Manoj Kumar vs.State of Himachal Pradesh 2018 SCC OnLine HP 118.**

6. Perused the application and say given by learned P. P. . The learned P. P. apprehend that if the accused is released on bail, there would be danger to the lives of witnesses. According to him on releasing the accused on bail he would not attend the Court and there is possibility of his absconding.

7. While considering an application for bail the Court has to exercise discretion in judicious manner and in accordance with the settled principle of law having regard to the crime alleged to have been committed on one hand and ensuring purity of trial of the case on the other. While deciding bail application the Court has to see whether the accused passes the tripod test i.e. flight risk, possibility of tampering with the witnesses and gravity of the offence. Learned Adv. Bile for the accused has invited attention to the observation of the Hon'ble Apex

Court in ***Prabhakar Tewari vs. State of U. P. & Anr. Cri. Appeal No.153/2020***. It is observed by the Hon'ble Apex Court that '*gravity of the offence and criminal antecedents are not the factors forming basis for refusal of the prayer for bail*'. As such gravity, seriousness of the offence is not the ground to reject the bail.

8. On perusal of the charge-sheet it is revealed that the alleged offence has taken place on the intervening night of 25.12.2024 and 26.12.2024 in the house of deceased Shiva Krishna Nayak. Initially accused No.4 pretended that deceased Shiva Nayak hanged himself. However at the time of the funeral ceremony brother of the deceased viz. Ashok Nayak found marks near both the ankles of the deceased. Further he did not find any marks on the neck of the deceased and therefore he suspected homicidal death of deceased Shiva Nayak. Thereupon F. I. R. is lodged on 13.01.2025. On perusal of the material on record it can be noticed that the case is founded on the circumstantial evidence. There is not a single eye witness of the alleged incident. According to witness Sita Shankar Rathod, sister of the deceased, she heard conversation of accused No.4 on mobile with somebody in which accused No.4 had narrated how she along with the other accused persons killed Shiva Nayak. Her statement reveals role of the applicant/accused in the alleged murder of Shiva Nayak. However said witness has not personally seen the alleged incident. Her evidence is material on the limited point of having heard the conversation of accused No.4 narrating the manner of killing Shiva Nayak with the help of the other accused persons. The another piece of evidence is the memorandum panchanama and the recovery of chocolate coloured Turkish handkerchief at the instance of the present applicant/accused. In ***Raju Gupta vs. State of Maharashtra, Bail Application No.1406/2022*** the Hon'ble Parent High Court held that, '*the disclosure statement made by co-accused is not a legal evidence qua a non-maker accused.*' However it

is legal evidence against the accused who made such statements. As such the disclosure statement of the applicant/accused can be a legal evidence against him. At the same time it is pertinent to note that disclosure statement is a piece of circumstantial evidence and it is not direct evidence. Having considered the material on record it prima facie appears that there is no direct evidence against applicant/accused except the statement given by accused No.4 to the police which is in the form of confessional statement. Being the statement made to the police it is hit by **Section 23(1) of the Bharatiya Sakshya Adhiniyam, 2023** and it cannot be proved against the accused.

9. No doubt the offence is grievous offence. However as discussed earlier gravity of the offence is not a ground to reject the bail application. While deciding bail application possibility of absconding and tampering with the witnesses is also required to be taken into consideration. Applicant/accused is from Karnataka state. The Investigating Officer had to take help of LCB for apprehension of the applicant/accused. Therefore prosecution has opposed the bail application on one of the grounds i.e. possibility of absconding. The another ground is of tampering with the prosecution witnesses. On perusal of the statements of the witnesses it is reflected that all the prosecution witnesses are having intimate relationship. Accused No.1 is maternal uncle of accused No.2 and 3, whereas accused No.1 is son of maternal uncle of accused No.4. In this way all the accused and the witnesses are near relatives. Taking into account the relationship between the accused and the witnesses I am of the view that tampering with the witnesses is even otherwise possible. At the same time it is essential to consider that the applicant/accused is hardly 19 years old. Recently the charge-sheet is filed in the Court. There are in all 24 witnesses. Therefore it would take much more time to conclude the trial. If the applicant/accused is detained behind bar in such a young age,

he would come in contact with the hardened criminals. It would certainly affect his future prospects. Taking into account young age of the accused, completion of investigation it is unjustified to detain the applicant/accused behind bar for indefinite period. His presence can be secured before the Court at the time of trial and apprehension of tampering with the witnesses can be curbed by imposing stringent conditions. In view of the overall discussion I pass following order :-

ORDER

01. Application is allowed.
02. Applicant/accused No.3. **Adhik Ashok Chavan, R/o. Kudal. Tal. Kudal, Dist. Sindhudurg (Native- Kalgitanda, Muddebihal, Dist. Bijapur, State Karnataka)** is released in C. R. No.05/2025 of Kudal Police Station for the offence punishable under Section 103(1), 238, 61(2)(a), 332(a) of the Bharatiya Nyaya Sanhita, 2023, on his executing P.R. Bond of **Rs.50,000/- (Rupees Fifty Thousand Only)** with one surety in the like amount subject to following conditions :-
 - a. The applicant/accused No.3 shall attend Kudal Police Station on every 15th and 30th day of each month during 11.00 a.m. to 2.00 p.m. , till further order.
 - b. The applicant / accused No. 3 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and tamper with the prosecution evidence.
 - c. He shall not commit any kind of offence.
 - d. He shall attend the Court on every date except in exceptional circumstances.

- e. He shall furnish address proof, contact numbers of himself and his two relatives and in the event of change of address accused is duty bound to inform the Investigating Officer.

03. Copy of the order be sent to the Kudal Police Station.

(Dictated and Pronounced in Open Court)

OROS.
DATE – 16.05.2025

(V. S. DESHMUKH)
I/c. SESSIONS JUDGE,
SINDHUDURG- OROS.