

CNR NO.MHSI010004482025



Sessions Case No.29/2025
(State Vs. Sitaram Rathod)

Order below Exh.27
(Dated 10.06.2025)

The applicant is seeking bail under Section 483 of The Bharatiya Nagarik Suraksha Sanhita, 2023 in Crime No.05/2025 for the offences punishable under Section 103(1), 238, 61(2) (a) and 332 (a) of The Bharatiya Nyaya Sanhita 2023, registered in Police Station, Kudal. This is the first bail application as per the learned advocate for the applicant.

2. Brief facts in the nutshell are that, on 25.12.2024, at about 9:00 p.m., Sachin Mohan Gawas, Police Head Constable, attached to Police Station, Kudal, received a mobile call from Police Station Officer Waradkar, who informed him that, one Shiva Krishna Nayak has hanged himself. He, therefore, asked him to go to that place and to complete the legal formalities. When he went there, he found the dead-body of Shiva lying on the floor in the kitchen and his wife i.e. the co-accused Sunanda was sitting besides it. He saw a saree being tied to the roof. When he asked about the incident, the co-accused Sunanda told him that, when she was sleeping with her two children in the other room, Shiva has hanged himself in the kitchen and that she has removed his dead-body and kept it on the floor. Gawas then prepared the inquest panchanama in presence of the panchas and sent the dead-body for postmortem examination.

3. On 04.01.2024, the brother of the deceased-Shiva viz.

Ashok Krishnappa Nayak went to the Police Station and raised suspicion against the applicant, Ajit, Adhik and Pratap Pawar. When Gawas started to inquire, he found that the applicant, the co-accused Ajit, and Adhik are missing and therefore, suspected on them. After getting the CDR of mobile phone of the co-accused Sunanda, it was found that, she was in constant touch with the applicant and the co-accused. Thereafter, the co-accused Sunanda was taken into confidence, who told that the applicant made a phone call to her on 25.12.2024 and told her about committing murder of Shiva. She consented for it. On 5.12.2024, at about 12:30 a.m., when Shiva was sleeping, at that time the applicant caught hold his legs, his nephew i.e. the co-accused Adhik gagged the mouth of Shiva with the aid of a thick cloth. The other nephew of the applicant i.e. the co-accused Ajit with the aid of a thick rope strangled Shiva. Thereafter, they pretended of Shiva hanging himself to the roof of the kitchen. After sometime the applicant, the co-accused Ajit and Adhik left the house alongwith the thick cloth and rope. In this backdrop, Police Head Constable Gawas lodged the report in Police Station, Kudal on 13.01.2025. On the basis of the said report, aforesaid offences were registered against the applicant and the co-accused.

4. Heard the learned Adv. S.D. Desai, for the applicant and the learned APP Shri. R.V. Desai.

5. The learned counsel for the applicant argued that the applicant has been falsely implicated in this case. He urged that there is no eye-witness to the incident. The applicant has been arrested only on suspicion. He argued that, the entire case of the prosecution is based on circumstantial evidence and the material on record, nowhere shows any circumstance pointing out towards the applicant. He pointed out the

mobile seizure panchanama and the memorandum panchanama to show that only on the basis of these documents, the applicant has been roped in the present crime.

6. He pointed out from the prosecution story and the mobile and memorandum panchanamas that, they are not consistent. He submitted that, according to the prosecution, Shiva has been strangled with the aid of rope, while the mobile seizure panchanama and as per the transcript of the alleged recording of the conversation between the applicant, one Gopal Chavan and Bhimappa Lamani, Shiva has been murdered by gagging cushion on his face. He also pointed out the memorandum and discovery panchanama to show that the rope has been allegedly recovered at the instance of the applicant. He also pointed out the postmortem report to show that, the cause of death is Asphyxia due to hanging. He pointed out the postmortem report to show that there was ligature mark, which nowhere shows that it was the case of strangulation. Contrary to this, in the statement of the brother of the deceased viz. Ashok Nayak, he has specifically stated that, he has not seen ligature mark on the neck of the deceased. Thus, according to him, the prosecution itself is not certain about the manner in which the incident occurred and the cause of death. This according to him creates a serious doubt in the prosecution story. He therefore, urged that, there is no material against the applicant and that, he being innocent.

7. He canvassed that the investigation is completed, charge-sheet has been filed and the custody of the applicant is now no more required. He urged that the apprehension of the prosecution that, the applicant will tamper with the prosecution evidence, can be taken care

of, by imposing appropriate conditions. He also argued that the co-accused-Adhik who has played a major role in the commission of the offence, is enlarged on bail vide application Exh.5 by the in-charge court, so also the co-accused Sunanda has also been enlarged on bail vide order below application (Exh.11) by this court and therefore, the applicant is also entitled for bail on the ground of parity. He, therefore, submitted that the applicant being innocent, he be enlarged on bail.

8. As against this, the learned APP strongly opposed the application on the ground that the applicant has committed a serious offence. He submitted that the applicant alongwith the co-accused committed the murder of Shiva, which was pre-planned. He pointed out that, there was extra marital affair of the co-accused Sunanda and the applicant and only to get rid of Shiva, who was coming in between their relations, he has been murdered. He pointed out the mobile seizure panchanama to show the transcript of the recording which took place between the co-accused Sunanda and the witnesses, wherein, the co-accused Sunanda has admitted her guilt.

9. He also pointed out the memorandum and discovery panchanama to show that, the rope by which Shiva has been strangled, is also recovered in pursuance of the disclosure statement made by the applicant. He urged that, all these circumstances, prima-facie points out towards the applicant and the co-accused, of they committing the offence. He submitted that though the investigation is completed, however, the possibility of the applicant tampering with the prosecution evidence, threatening the witnesses and absconding, if, enlarged on bail, cannot be ruled out. He, thus, prayed for rejection of

the application.

10. Perused the charge-sheet and the reply. There are allegations that, Shiva has been strangled with the aid of rope by the applicant and the co-accused, as the co-accused Sunanda was having extra marital affair with the applicant. The only evidence against the applicant is the mobile seizure panchanama, wherein the transcript of the conversation between the co-accused Sunanda and the witnesses is mentioned, and the memorandum and discovery panchanama in pursuance of which the rope used in the commission of the offence is recovered. According to the prosecution, as per the said conversation and the memorandum and discovery panchanama, the applicant and the co-accused committed the murder of Shiva. Perusal of the said panchanama shows that, the co-accused Sunanda allegedly stated that, Shiva was killed by gagging his mouth with the aid of a pillow. Contrary to this, it is the case of the prosecution that, Shiva has been strangled with the aid of rope.

11. The postmortem report shows the probable cause of death as, 'Asphyxia due to hanging'. When, as per the postmortem report, the cause of death is due to hanging, the prosecution has not prima-facie shown, as to how, the aforesaid panchanamas, wherein the transcript of the conversation of the co-accused Sunanda is mentioned, would be helpful to it, to show the consistency with its story of, Shiva being strangled with the aid of rope. The size of the ligature mark according to the learned advocate for the applicant, does not show that, it is a case of strangulation. I find some substance in the said submission, as the ligature mark is not found around the entire neck. Contrary to this, the brother of the deceased viz. Ashok while giving statement has

specifically stated that he has not seen any mark of hanging on the neck of the deceased. This prima-facie does not corroborate the prosecution story. Thus, prima-facie it appears that, there is no consistency regarding the cause of death of Shiva. The prosecution itself is not certain about the cause of death and the manner in which the incident occurred. All these circumstances creates a serious doubt, when there is no eye witness. Though, the cloth is recovered in pursuance of the disclosure statement made by the co-accused Adhik, however, he has already been enlarged on bail by the in-charge court. So also the co-accused Sunanda has also been enlarged on bail by this court.

12. Admittedly, there is no eye witness. The entire case of the prosecution rests on circumstantial evidence. The the mobile seizure panchanama and the memorandum and discovery panchanama, are not consistent with the prosecution story. The applicant at this stage has created some doubt regarding the cause of death. As the case of the prosecution rests on circumstantial evidence, the chain of circumstances will have to be established by the prosecution beyond reasonable doubt, which will take its own time and till that time, considering the above circumstances, the applicant can not be allowed to languish in jail for years together.

13. The applicant has been arrested on 16.01.2025 and since 21.01.2025 he is in jail. Sufficient period has elapsed from the date of arrest of the applicant. The investigation has been completed and now charge-sheet has been filed. The prosecution has also not demonstrated anything requiring the custody of the applicant, after filing of the charge-sheet. Hence, I do not find any material to keep the applicant in jail. The

applicant is also not having any criminal antecedents, as nothing to that effect has been disclosed by the prosecution in their reply. There is nothing on record to show that the applicant will abscond or tamper with the prosecution evidence or commit similar type of offence in future. The apprehension of the prosecution to that effect, is not well founded. Even otherwise, the interest of the prosecution can be safeguarded by imposing necessary conditions on the applicant. The applicant has thus, made out a case for enlarging him on bail.

14. The co-accused-Adhik who has been assigned a major role in the commission of the offence, has been enlarged on bail by the incharge court, vide order below Exh.5 on 16.05.2025. So also the co-accused Sunanda has also been enlarged on bail vide order below application (Exh.11) by this court. As the role assigned to the applicant, the co-accused-Adhik and Sunanda is more or less similar, the applicant is entitled for bail, also on the ground of parity. In the above circumstances, I think fit to release the applicant on bail, with the following order.

∴-ORDER-∴

1. The bail application is allowed.
2. The applicant- Sitaram Babu Rathod be released on bail on his executing personal bond of Rs.50,000/- (Fifty Thousand Rupees only) with a local surety in the like amount, in Crime No.05/2025 registered in Police Station, Kudal on the following conditions :-
 - (i) He shall mark his presence at Police Station, Kudal on first Sunday of each month in between 10.00 a.m. to 1.00 p.m., till the conclusion of trial.
 - (ii) He shall not, directly or indirectly, make any inducement,

threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer.

- (iii) He shall not tamper with the prosecution evidence in any manner.
- (iv) He shall not in future commit an offence similar to the offence with which he is charged or any other offence, in default, the prosecution will be at liberty to apply for cancellation of his bail.
- (v) He shall attend the court dates regularly.
- (vi) He shall furnish his residential proof and mobile number on record.
- (vii) He shall also furnish names of two of his close relatives, their addresses and mobile numbers.
- (viii) He shall not leave India without prior permission of this court.

Date: 10.06.2025

(H.B.Gaikwad)
Sessions Judge,
Sindhudurg-Oros.