

MHST010016162024



**Common Order below Exh.5 & 6 in Sessions Case No.59 of 2024.**

1. By taking aid of Section 483 of Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS), the applicants are seeking bail in C.R.No.261 of 2024 u/s 302, 323, 109, 504, 506 r/w 34 of the Indian Penal Code, registered with Satara Taluka Police Station.

2. Since both the applications are arising out of one and the same crime, hence I am deciding both the applications simultaneously by common order.

3. The facts which are necessary for disposal of present application are recapitulated as under :

On 12/6/2024 the FIR was lodged Anil Madhukar Shinde (now deceased). He was resident of village Patkhal, Tal. Satara & was residing there along with his wife. His two sons are residing at Pune. It is alleged that, on 11/6/2024 at about 9:00 pm while the deceased was at Satara, his wife made phone call to him & he told her that he is coming to house. At about 10:22 pm, again his wife made phone call him to him and asked him to come to house immediately as co-accused Shivjeet Mane and his 3 unknown companions had come to house and they are threatening and giving kicks on the door. Thereafter he immediately came to his house at about 10:40 pm.

4. When the deceased was parking his motorcycle in front of

his house, the accused Shivjeet Mane and his 3 unknown companions rushed towards him. They assaulted him by kick and fists blows. The accused Shivjeet told him that if your son is not praying apology, then I will not leave you and your son alive and I will kill you today itself. The said unknown companions of accused Shivjeet told that we will kill him right now. Thereafter, the accused Shivjeet brought the petrol cane from his four wheeler. The co-accused caught hold the deceased & Shivjeet poured petrol on person of the deceased. Thereafter they fallen down him and Shivjeet set him on fire by igniting match stick. Due to which the deceased sustained burns and he started shouting on which his wife Ujwala, neighbourer Ketan, Pratik came there to rescue him. At that time the accused persons also assaulted the witnesses and ran away. The deceased's wife extinguished the fire by pouring water on person of the deceased. Thereafter the deceased was taken to civil hospital, Satara. While he was admitted in civil hospital Satara, police recorded his statement. His statement was treated as FIR and on the basis of it, the above offence came to be registered u/s 307, 323, 506 r/w 34 of IPC. While taking treatment in Surya hospital, Pune on 13/6/2024 the deceased died and hence charge u/s 302 of IPC came to be added in this crime.

5. Both the applicants came to be arrested in connection with the crime on 12/6/2024. Initially, they were remanded in police custody and subsequently, remanded in judicial custody. At present, they are lodged in jail.

6. Besides the usual grounds of innocence and false implication, the applicants are seeking bail on the grounds set out in their respective applications. By & large the grounds for bail in both

the applications are almost identical. According to applicants, the entire allegations in the FIR are false, frivolous and improbable. Both the applicants are college students and they are prosecuting studies in colleges at Pune. After the incident, the deceased was alive almost 2 days, but the investigation agency has not taken pain to call the Magistrate for recording the dying declaration of the deceased. Before giving statement/ FIR the deceased was taking medical treatment at civil hospital. The possibility of the deceased was given sedative or other strong medicines and hence the deceased was unable to provide the detailed accounts of the incident to police. The deceased sustained 55% burns and subsequent medical interventions could have impaired the deceased's ability to make a declaration. The applicants are the tender aged persons, they are students and they have good educational and social background. They have no criminal antecedents. They have no concerns with the crime. They have cooperated the investigation agency during investigation. Now, investigation is completed and police filed charge-sheet in the Court. There is no evidence against the present applicants in the entire charge-sheet. Therefore, there is no propriety to keep the applicants behind bar for uncertain longer period. If the applicants are detained in custody, it will severely affect their educational career. The applicants are ready to furnish surety to the satisfaction of the Court, so also they are ready to fulfill/abide the conditions which would be imposed upon them. With these contentions, they prayed for releasing them on bail.

7. The prosecution strongly opposed the bail applications vide its say Exh. 9. According to prosecution, offence is serious one.

Earlier bail applications filed by the present applicants have been rejected by this Court on merit. According to prosecution, the prime accused Shivjeet Mane poured petrol on person of the deceased and set him on fire. The applicant Jotiradiya had made shooting of the entire episode in the mobile phone of prime accused. According to prosecution, in case the applicants are released on bail, then there is every possibility of tampering the evidence and pressuring the witnesses. In short, according to prosecution, the charge-sheet prima facie shows the involvement of present applicants in the crime and hence they are not entitled to be released on bail. With this contention, prayed for rejection of applications.

8. I have heard Shri.Kadam, the Ld. Counsel for both the applicants. Mr. Jadhav, the ld. counsel for accused Jotiradiya submitted his written submission Exh.14 on record. I also heard Shri.Oak the Ld. A.P.P. for State at length. Shri. Panhale, the ld. counsel for victim placed on record the written submissions vide Exh.13 and opposed to grant bail.

9. Shri. Kadam the ld. counsel for the applicants submitted that, the incident of setting the deceased on fire had taken place on 11/6/2024 around 10:40 pm., whereas the deceased died on 13/6/2024, but the investigation agency has not taken pain to call the Magistrate for recording dying declaration of the deceased. He further submits that the allegations in the FIR are not only false but improbable. The deceased himself lodged the FIR. As per prosecution case, the deceased sustained 55% serious burn injuries. His statement was recorded while he was taking treatment in civil hospital. In a

cases of burns, normally the sedatives and strong medicines dose used to be given to the patient and hence the deceased was not able to give the correct account of the incident as there is a possibility that he was under the influence of sedative. Mr. Kadam has demonstrated the variance between the FIR and the CCTV footage. He further submits that in the FIR there are allegations that 3 unknown companions of prime accused Shivjeet assaulted the deceased, they caught hold the deceased and prime accused Shivjeet poured petrol on his person from the petrol cane by bringing it from the four wheeler and thereafter the deceased was fallen on the earth and then accused Shivjeet set him on fire by igniting match stick. Mr. Kadam has invited my attention towards the panchanama dt. 21/6/2024 regarding the CCTV footage. The entire incident has been captured in the CCTV. In CCTV footage there is no reference that co-accused caught hold the deceased and then the prime accused poured petrol on person of deceased. Thus according to Mr. Kadam the FIR and CCTV footage is totally contradictory with each other. As such, FIR is not probable and it prima shows false implication of present applicants in the crime. Mr. Kadam further submits that according to prosecution, in November 2023 there was marriage of son of deceased and in the procession of the marriage, there was quarrel between Prajwal who happens to be son of deceased and prime accused Shivjeet and his father. The present applicants are totally unknown to the deceased, therefore there cannot be any motive on their part to commit the murder of deceased.

10. Mr. Kadam further submits that, if we consider the role attributed to the present applicants in the crime, prima facie there is

no evidence of sec. 109 of IPC. He further submits that, as per prosecution case, the accused Jotiradiya, only made video shooting in the mobile phone. Both the accused had not instigated prime accused to commit the murder or assisted or facilitated the prime accused in committing murder of deceased. Considering their role, the present applicants may be released on bail. According to him, the accused Yash Gaikwad is prosecuting studies in First Year Engineering College at DY Patil College Pune. The accused Jotiraditya is currently pursuing studies of Bachelor of Business Administration at MIT College, Pune. Their academic year has been commenced and if the applicants are not released on bail, then their educational career would be spoiled. He further submits that, during investigation the applicants were remanded in police custody, but nothing was recovered from them. The investigation is completed. There is no immediate prospectus of commencement of trial in a near future. In such circumstances, if the applicants are denied bail, then they would suffer uncertain longer detention behind bar. Hence, he prayed for grant of bail. In support of his contention, he relied upon judgment of Hon'ble Bombay High Court in the matter of **Shahadev Karbhari Sanap v/s State of Maharashtra 2024 NCBHC- AUG.- 22143**. He further relied upon judgment of Hon'ble Apex Court in the matter of **Jalalluddin Khan v/s Union of India 2024 (9) Scale 157**.

11. The ld. APP Shri. Oak submits that, offence is serious one. While deciding the application for bail, the Court is required to consider the evidence available on record against the accused. He further submits that, while deciding the bail application, roving enquiry of the prosecution evidence is not permissible. Therefore,

according to him, the submission advanced by the ld. counsel for applicants regarding contradiction in FIR and the panchanama of CCTV footage cannot be considered at this juncture. Shri. Oak submits that, both the applicants have taken active participation in the commission of offence. Prior to the incident, all the accused assembled near Jotiba temple, from there the accused No.1 took petrol from the motorcycle of accused No.5, at that time the present applicants were present there. They come together to the house of deceased, it means they have shared common intention and in furtherance of their common intention, the crime had taken place. Therefore, it cannot be said that, the present applicants had no knowledge about the act of prime accused. There is a clinching evidence against the accused which shows their prima facie involvement in the crime and according to him, the applicants are not entitled to be released on bail.

12. The ld. counsel for victim has placed on record the written submission. According to victim, this is a second bail application and earlier bail application has been rejected on merit. There is no material change in circumstances, therefore the present applications are not at all maintainable. The ld. counsel for victim supported the argument advanced by the ld. APP.

13. I have gone through the material placed on record by the prosecution. In the instant case, according to victim, the applications are not maintainable because there is no substantial change in circumstance. Therefore, firstly it is be decided whether the present applications are maintainable. Needless to mention here that, successive bail applications are maintainable, provided that there

must be substantial change in circumstance. Admittedly, the present bail applications are the second bail applications filed by the applicants. While the investigation was going on, earlier bail applications were rejected. In the instant case, police completed the investigation and filed charge-sheet in the Court. The present bail applications are filed by the applicants after filing charge-sheet. Filing charge-sheet is a substantial change in circumstance. Since earlier bail applications were rejected at the time of investigation was in progress and these bail applications have been filed after completing the investigation. Filing charge-sheet in the Court is a result of completion of investigation. Thus, filing charge-sheet is a substantial change in circumstances. Therefore, the present applications are perfectly maintainable.

14. I have gone through the FIR. In the present case, FIR came to be lodged soon after the incident i.e. on 12/6/2024 by the deceased himself. As per the prosecution case, on 11/6/2024 at about 10:40 pm in front of the house of deceased at village Patkhal, the incident occurred. As per prosecution case, the co-accused Shivjeet poured petrol on person of the deceased and then set him on fire by igniting match stick. Thereafter, the deceased was taken to civil hospital, Satara. While he was taking treatment, API- Anil Morade recorded his statement and his statement was treated as FIR.

15. The papers of investigation further shows that, in the incident the deceased Anil Shinde sustained near about 50% to 55% superficial to deep burn injuries. He was shifted to Surya hospital, Pune for further treatment, however the record shows that while

taking treatment in Surya hospital, deceased Anil Shinde breathed last on 13/6/2024 at about 5:39 am. The record further shows that thereafter inquest panchanama was prepared and dead body of deceased was sent to Sassoon hospital for postmortem. On perusal of PM notes it shows that, on 13/6/2024 in between 11:55 am to 12:55 pm postmortem of the dead body of deceased was conducted in Sassoon hospital and autopsy surgeon opined as to cause of death, "shock due to burns". Thus, there is a prima facie evidence showing that the deceased died due to burning.

16. From the FIR it further appears that, the present accused and co-accused had gone to the house of deceased on 11/6/2024 at about 10:22 pm. It further shows that, they have threatened the wife of deceased and they have also kicked the door of the house. Hence, due to the fear, the wife of deceased made phone call to deceased and called him. It further shows that, after arrival of the deceased near his house, the co-accused Shivjeet told him that, if your son had not expressed apology, then we will not keep you and your son alive. At that time, the present applicants and co-accused uttered the word that, 'we will kill him right now'. Thereafter, the co-accused Shivjeet brought the petrol cane and poured petrol on person of deceased. The present applicants caught hold the deceased and then the prime accused Shivjeet set him on fire by igniting match stick. The FIR further shows that, when the witnesses Ketan and Pratik came there to rescue him, at that time accused persons assaulted them and ran away.

17. In the instant case, the entire incident is captured in the

CCTV camera which is installed there. The investigation officer collected the CCTV footage during course of investigation. The CCTV footage panchanama dt. 21/6/2024 shows the presence of present applicants at the place and time of incident. the prime accused Shivjeet had given his mobile to applicant Jotiradiya for taking video shooting and accordingly he had recorded the video shooting. The CCTV footage shows that, it is seen in the camera that, the prime accused Shivjeet poured petrol from the bottle on person of the deceased and set him on fire. No doubt, there is inconsistency in the incident captured in the CCTV footage and the FIR. However, it is well settled that, while deciding the application for bail, roving enquiry of evidence of prosecution is not permissible. Therefore, I am of the humble opinion that, the said inconsistency can be considered at this stage.

18. In the present case, I have gone through the statements of the eye witnesses namely Pratik Shinde and Ketan Shinde. They have specified in their statement that, when they attempted to nab the present applicants, they assaulted them. At this juncture, it cannot be decided whether the above witnesses are telling false. Obviously, it can be decided when the accused went on trial. Therefore, I am of the humble opinion that the inconsistency cannot be considered at this stage.

19. From the police papers it appears that, the applicant Jotiraditya recorded video shooting of the incident in the mobile handset of the co-accused Shivjeet. I have gone through the statements of the eye witnesses. From their statements, it appears

that, previously quarrel between son of deceased and co-accused Shivjeet had taken place in the marriage of son of deceased. It further appears that accused Shivjeet was insisting that son of deceased should pray his apology and over this issue, there were quarrels between them. Perusal of the statement of eye witnesses Ketan, Pratik shows that, present applicants and co-accused manhandled them when they attempted to nab them. I have gone through statement of Sandip Shinde, which depicts that on 11/6/2024 at about 10:20 am to 10:25 am, when he was returning to home he found that, accused Ranjit Mane, Shivjeet Mane and 3 unknown boys were discussing. He also found that, accused Shivjeet had taken out petrol from the motorcycle of his father. It means soon prior to the incident, the present applicants and prime accused Shivjeet had discussion near Jotiba temple. At that time the prime accused had taken out petrol from tank of motorcycle and at about 10:40 pm and soon immediately after it, the incident of pouring petrol and setting the deceased on fire had taken place. It means prima facie there is a evidence showing that, the present applicants were consciously aware about all activities of the prime accused.

20. The circumstance of taking out petrol in the bottle from the motorcycle by the co-accused Shivjeet in presence of the present applicants and thereafter they all went towards house of deceased and in the incident co-accused Shivjeet poured petrol on person of deceased and set him on fire. The entire episode shows that the present applicants had conscious knowledge about what the prime accused what he was doing. Still co-accused Jotiradiya video graphed the incident and applicant Yash abetted the prime accused. They have

not prevented the accused Shivjeet from committing the offence, it means they have involved in the crime.

**21.** I have gone through the statement of Anil Harishchandra Shinde. According to him, he had seen the present applicants and prime accused Shivjeet and co-accused Rajaram near Jotiba temple on 11/6/2024 at about 10:00 am, their swift car was also stationary there and they were discussing with each other and thereafter the incident occurred. Prima facie it shows that there is a prior meeting of mind. In other words, there is a prima facie evidence showing that, near Jotiba temple the co-accused and present applicants made plan to commit the offence. Prima facie it shows that there is evidence of preparation of crime by the present applicants and co-accused persons.

**22.** I have gone through the statement of Rajaram Shinde who stated that on 11/06/2024 at about 10:15 pm, when he was returning to his home, he found that near Jotiba temple, accused Ranjit and Shivjeet were chitchatting with 3 unknown boys, at that time one Swift car and motorcycle was parked there. Ranjit Mane was telling to Shivjeet and his 3 unknown companions to kill the family members of Prajwal and Anil Shinde by setting him on fire. The present applicants were put in TIP and they were identified by the eye witnesses Ujwala Shinde, Ketan Shinde and Pratik Shinde. If we consider the entire evidence collected by the prosecution, it appears that, there is a prima facie evidence showing active involvement of the present applicants in the commission of offence.

23. It is pertinent to note that, the prime accused Shivjeet poured petrol on person of the deceased and set him on fire. The present applicants who are claiming themselves as college students, one of them recorded the video shooting of the incident and another is instigating. These peculiar facts and circumstances of the present case and the clinching evidence against the present applicants, they are not entitled to release on bail.

24. I have gone through the judgment cited by the present applicants. However, considering the facts and circumstances of the present case, according to me the judgment cited by the applicants are not helpful for the applicants. Thus, in totality of above discussion, there is a clinching evidence showing the positive involvement of the present applicants in the crime and considering the seriousness of the crime, according to me, the applicants are not entitled for bail. In the result, I pass following order.

**ORDER**

1. Both bail applications Exh. 5 & Exh. 6 stands rejected.

**Satara.**

**Date : 27.11.2024.**

**(Ashokkumar B. Bhillare)**  
**Addl. Sessions Judge, Satara.**