

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WASHIM.

S.T. No.49/2024
Rupesh x State

Order below Exh.89
(Passed on 22/04/2025)

The applicant/accused Rupesh Gajanansingh Gaherwal [Thakur] has filed this application for bail under Sec.439 of Cr.P.C. Perused the application, say filed by APP and charge-sheet. Heard Ld. advocate for the applicant/accused, Ld. APP for the State.

2. The applicant/accused is facing trial for the offence punishable under Sections 302, 324, 326, 143, 147 148 r/w Section 149 of the Indian Penal Code.

3. The Ld. advocate for the applicant/accused submitted that after filing charge-sheet this is second bail application and as Hon'ble High Court recently has granted bail to co-accused Shankar Prakash Khule and the role of applicant/accused is similar to the said co-accused, therefore ground of parity is applicable and hence there is change in circumstances, hence successive bail petition is maintainable.

4. He further submitted that name of applicant/accused is not mentioned in FIR which is filed by the deceased. He submitted that only in the police statement of Jayraj Bisnasingh Chandele there are allegations against applicant/accused that he and co-accused Sunil Thakur had given blow of pipe and stick on the head of deceased Uttam Bajad. He submitted that there are material contradiction regarding timing mentioned in police statement of witness Jayram and statement recorded u/s 164 of Cr.P.C. of witness Jayram. He further submitted that stick is shown to be recovered from the applicant/accused however, no blood stains found on said stick and clothes of applicant/accused. He

submitted that the father of applicant/accused is ill and no one is available for his care. He submitted that charge-sheet is filed on 14/08/2024 but till today trial is not started. On these grounds he submitted that application be allowed.

5. On the other hand, the Ld. APP submitted that in the police statement of witnesses Jayraj Bisnasingh Chandele and Dnyaneshwar Gaikwad it is specifically mentioned that applicant/accused Rupesh and co-accused Sunil had given blow of stick and iron rod on the head of deceased Uttam Bajad. He submitted that as per PM report cause of death is head injury. He submitted that the role of Shankar Khule is different than applicant/accused therefore ground of parity is not applicable. He submitted that trial is not delayed because of prosecution but every time the accused who are on bail remained absent deliberately and therefore charge cannot be framed. He submitted that there is prima-facie evidence against applicant/accused and if the accused is released on bail then he will put pressure on prosecution witnesses and tamper the evidence. On these grounds he prayed that the application be rejected.

6. It is case of the prosecution that on 25/03/2024 at about 3.00 to 4.00 p.m. quarrel took place between accused Sunil Thakur and Jayram. Then Sunil Thakur called other six to seven persons. They arrived there alongwith stick and iron pipe and assaulted Jayram on his head and when deceased Uttam Bajad tried to intervene in the quarrel the said persons also assaulted him by stick and iron rod. It is also case of prosecution that said person also assailant Mithilesh, Akhilesh and Manchan and caused injury to them. Initially, the offence was registered under Section 324, 143, 147, 148, r/w 149 of IPC. Then Section 326 of IPC was added. It is case of prosecution that when deceased Uttam Bajad

was taking treatment he expired on 29/03/2024. As per PM report cause of death is head injury and thereafter Section 302 of the Indian Penal Code was added.

7. It is on record that after filing of charge-sheet as per order passed below Exh.14 the bail application of applicant/accused was rejected on merit. It is contention of applicant/accused that recently Hon'ble High Court has granted bail to co-accused Shankar Khule and his role is similar to co-accused Shankar Khule therefore ground of parity is applicable and there is change in circumstances. However, the role of applicant/accused is different than co-accused Shankar Khule because in the police statements of witnesses Jayraj Bisnasingh Chandele and Dnyaneshwar Gaikwad it is specifically mentioned that applicant/accused Rupesh and co-accused Sunil had given blow of stick and iron rod on the head of deceased Uttam Bajad and cause of death mentioned in PM report is head injury. Therefore, ground of parity is not applicable. Hence, there is no change in the circumstances. Hence, successive bail petition before the same Court is not maintainable.

8. So far as delay in trial is concerned Roznama shows that every time co-accused who are on bail claimed exemption on various grounds. Therefore, the charge was not framed. It is on record that on last some dates the Court was pressing for framing of charge, then discharge application of co-accused Nitesh was filed on 08/04/2025 at Exh.19. On 08/04/2025 Ld.APP filed draft charge at Exh.91. Thus, the trial is not delayed due to prosecution, but for the absence of co-accused who are on bail.

9. So far as contradictions pointed out by the Ld. advocate for applicant/accused regarding timing and using of rod as a weapon by

applicant/accused are concerned, this Court has already rejected earlier bail application [Exh.14] filed by this applicant on merit, therefore in successive bail application again that point cannot be considered.

10. Considering the above aspect the applicant/accused is not entitled to get bail. Hence, I pass the following order.

ORDER

Application is rejected.

Date: 22/04/2025

(N.R.Pradhan)
Additional Sessions Judge,
Washim.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/ Order are same word to word, as per the original judgment/order.

Name of Stenographer	:-	R.K.Pawar, Stenographer (Grade-I)
Name of Court	:-	District Judge-1 and Additional Sessions Judge, Washim.
Date of Judgment/ Order	:-	22/04/2025
Judgment/Order signed by the Presiding Officer on	:-	22/04/2025
Judgment/Order uploaded on	:-	22/04/2025