

IN THE COURT OF SESSIONS, YAVATMAL

MHYA010016172025

Session Case No.71/2025

State V/s. Shivam+1

Order Passed Below Exh.09*(Passed on 14th May, 2026)*

The bail application is filed by accused No. 1 Shivam @ Shiva Premdas Rathod and accused No. 2 Vansh Sanjay Kotekar under section 483 of BNSS seeking regular bail in Crime No.490/2025 registered at P.S. Audhutwadi, for the offences punishable under sections 109, 126(2), 351(2), 352 r/w 3(5) of BNS.

2] The contention of the applicant/accused is that they are peace loving law abiding citizen of India. Report has been lodged by informant that on 09/03/2025, around 9.00 pm when he and his friend Mangesh were drinking at a bar at MIDC Lohara accused abused, threatened them and later on once when they were on their way back attacked them with knives. It is further alleged by the informant that he managed to flee initially and later on returned to spot but could not find his friend Mangesh who he learnt to be admitted in hospital on next day. But he has been falsely implicated. There is no prior dispute, quarrel to commit a serious offence. Even as per FIR the alleged incident if occurred is seem to be without pre - mediation. The informant went back home, and gave report on next day and not immediately which raises doubt. The conduct of informant to cancel himself and not save his friend is unnatural.

Medical papers are contradictory to prosecution case. The informant did not need to get admitted and remained at home which does not support his case of injury needing 12 days to him. It is submitted that no prima facie case is made out. No recovery is done from applicant. There is no single eye witness even though incident occurred in MIDC area. There is no further need of custody. They have no antecedent. They are willing to co-operate. They are bread winner of their family. They will abide all conditions. They will furnish surety. Hence, application for relief laid above.

3] Say of APP and I.O. was called. APP vide his say (Exh.10) has opposed the bail application. It is submitted that *prima-facie* case is made out against applicant/accused. Facts of the case have been elucidated. It is submitted that medical report support prosecution case. The nature of offence is serious. If enlarged applicant/accused might pressurize witnesses. There will be law and order problem. There will be danger of life of witness. It is submitted that similar type crime is registered against applicant/accused at police station Lohara.

4] The IO through his say (Exh.11) has resisted the bail-application. It is submitted that charge sheet has been filed. The accused in furtherance of common intention had committed murder within limits of police station Lohara. They have with the intention to commit murder attacked the informant in this case. Both offence are serious. If applicant / accused are released they would pressurize witness whose life would be in danger.

5] The defence counsel argued that informant had only sustained injury on hand which is not a vital part. He continued that

if the injury was actually serious he would not have gone home but to hospital. Taking this court through FIR he pointed out that informant had fled from the spot which goes to show that he was not an eye witness to allege crime occurred with Mangesh. He contended that the accused have been in custody for long and the trial is yet to start which shows that it will take time to conclude. He contested that the informant, witness and the accused are from different places whereby there is no question of danger of law and order. He added that the accused had no criminal antecedent.

6] Refuting the defence argument APP submitted that the say Exh. 10 may be taken into account.

7] Heard both sides. Perused record. There is no doubt that the nature of offence is grave and the charge is serious. Even the punishment which will entail on conviction is severe. However, while exercising its judicial discretion in considering question of grant or refusal of bail, besides gravity, the Court must also give regard to the background of facts and concomitant circumstances. The parameters to be taken into account for considering entitlement of bail broadly include, *albeit* are not restricted to, circumstances under which offence is stated to have been committed, the status of the accused, his propensity to flee from justice, probability of re-occurrence of crime on his part so on and so forth. Thus, matter of grant of bail cannot be considered by applying any inexorable formula.

8] The prosecution has objected to release of the accused on the ground that medical evidence adduced on record support their case. The defence counsel exhorted that as evident from report of informant no injury is sustained whereby section 109 of B.N.S. is

not attracted. In this context, it is relevant to note that the rival contentions agitated by both the sides involve question of fact and law which cannot be cogitated upon unless both sides have got opportunity to participate through evidence and cross-examination. Further, veracity of evidence and whether it is sufficient to bring home the guilt, alongwith involvement of the accused is a question of trial. The *mens-rea* ascribed to the accused cannot be deliberated upon in depth at this tier. It has to be taken into account only to the limited extent of whether the prayer for bail can be considered.

9] The prosecution exhorted that 'knife' was used as weapon in commission of offence. The defence exhorted that the factual matrix alleged is improbable. What is irrefragable from the record before me is that the 'knife' has already come to be seized during investigation. Thus, no further recovery or discovery at the instance of the accused is manifest as being pending. Neither is this the contention in the say (Exh.10 and 11).

10] Further, in addition to above referred facts and circumstances, the substratum of stage of investigation also needs to be taken into account. Charge-sheet is filed and is pending on the balance sheet of this court. With the investigation being completed no custodial interrogation of the accused can be said to be requisite as would require his further physical custody. As has been held by Hon'ble Apex Court in catena of judgments any accused is to be kept in extended detention only when the same is imperative under factual matrix of the case. However, the stage of matter does not make it perspicuous in the instant case.

11] The prosecution further opposed bail on the ground that charge under section 109 of BNS was serious. This was counteracted by defence on the ground that it does not contemplate death penalty. It has been observed by Hon'ble Apex court in catena of cases that however serious a crime may be the Court needs to take into account that applicant is an accused not a convict. It held that it is postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty. If the above observations are pondered in context of case in hand it is manifest to come to assistance of the applicant/accused.

12] The defence counsel contended that accused are in custody since 16/04/2025 and trial is yet to commence which entitles them for bail. In this matter charge is framed but no property is yet deposited by prosecution. Even if prosecution expresses willingness to proceed presently without the same that ipso-facto does not amount to explanation for no progress till date. There is seen delay which is not attributable to the accused. This delay in progress of trial confers right on the accused to apply for bail.

13] The prosecution apprehends possibility of law and order problem since the accused have criminal antecedents. This is counteracted by defence side. Mere apprehension cannot stampede the Court into complacent refusal. This is because the object of bail is to secure the presence of the accused person at trial. It is not expected to be punitive or preventive. In such cases "necessity" is the operative test and bail should not be withheld as a punishment. In any case criminal antecedent solus cannot be the ground to reject bail and all factors have to be considered in entirety. The charges which

have been invoked against applicant/accused in the instant matter do not provide for punishment of death or life imprisonment.

14] The prosecution has combated that after being enlarged the accused might pressurize and endanger the life of victim and witnesses. Both the accused reside within jurisdiction of this court. Considering that they have other matter pending against them but there is no contention of them to have not attended the same goes to show that propensity to flee is not exhibited. There are thus elicited no exceptional factors which manifest likelihood of them interfering, polluting, thwarting the process of trial so as to raise exception to the above given object. Their release is not apparent to prejudice the prosecution case. Moreover, apprehension of absconsion, evasion, repetition or pressurizing can be addressed by imposing conditions. In view of above discussion the application deserves to be countenanced.

15] Before saying omega it is clarified that any observation made herein-above are not to be construed to be reflection on the merits of the case and shall remain confined to disposal of this application alone. Ergo, I ordain as follows.

ORDER

1. The application is allowed.
2. Accused No. 1 Shivam @ Shiva Premdas Rathod and accused No. 2 Vansh Sanjay Kotekar be released on P.B. of Rs.1,00,000/- (Rs. One Lac Only) each with solvent surety in the like amount in relation to FIR No.490/2025 registered at Police Station Audhutwadi, for the offences punishable under sections 109, 126(2), 351(2), 352 r/w 3(5) of BNS on the following terms and conditions:

- (i) The accused 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 them from disclosing such facts to the Court.
- (ii) They shall attend each and every date before trial Court, failing which it shall be a ground for cancellation of bail.
- (iii) The accused not to indulge in any illegal activities or in committing the offence of like nature.
- (iv) They shall produce verified copy of their Aadhaar Card, Cell phone number and other address proof. He shall keep the IO updated about any change in address.
- (v) Their surety shall produce verified copy of his Aadhaar Card, contact details, copy of Bank Pass-Book and other address proof.

Place:Yavatmal.
Date : 14/05/2026.

(S.R.Sharma)
Additional Sessions Judge,
Yavatmal.