

MHPA100004112025

**ORDER BELOW EXHIBIT No.5 IN
SESSION TRIAL No.25/2025**

State of Maharashtra

Vs.

Shivaji s/o Rakhmaji Rodge (A-6)

Haribhau s/o Ranba Mohite (A-7)

1. The accused Nos.6 and 7 have filed application under section 483 of the Bharatiya Nagarik Suraksha Sanhita, in connection with Crime No.79/2025 registered for the offences punishable under sections 137(2), 118(2), 103(1), 311 r.w. Sec.3 (5) of the Bharatiya Nyaya Sanhita (in short 'BNS'), with Palam Police Station.

2. Heard learned Advocate Shri M.K. Toshniwal for accused Nos.6 and 7 and learned APP Shri S.D. Wakodkar for the prosecution.

3. First bail application of the accused Nos.6 and 7 rejected by this court on 25/04/2025. After filing of charge-sheet, this is first bail application. There are no criminal antecedents against accused. From accused No.6 motorcycle MH-22/AY-4106 owned by him was seized on 08/03/2025. No any stolen or robbed article are seized from the possession of accused Nos.6 and 7.

4. Advocate for accused submitted that the entire case of the prosecution is based on the last seen theory and C.C.T.V. footage. He submitted that merely at about 07.27 p.m. on the earlier day the presence of present accused was noticed out side country liquor shop is not sufficient to jump to the conclusion that the accused in furtherance of their common intention has committed murder of deceased Balasaheb Jadhav. He submitted that the C.C.T.V. footage is of 19.28 hours of 03/03/2025 and deceased Balasaheb Jadhav was found in injured condition at Nanded 'T point', Purna in the morning of 04/03/2025. He submitted that considering the time gap, the third party intervention can not be ruled out and, therefore, there is no prima facie sufficient material to connect the accused with the crime. Even the accused Nos.6 and 7 are not on the motorcycle on which deceased was seen in the company of co-accused. The C.C.T.V. footage of country liquor shop is a public place and, therefore, the present of the accused seen in the C.C.T.V. footage is not sufficient to connect them in the crime. All the persons seen in the C.C.T.V. footage are not accused in the present case. Witness Shyamrao Choudhary and Khating shifted the injured to the hospital. Accused are not acquainted with the deceased.

5. Advocate for accused further submitted that

there was no motive on the part of accused Nos.6 and 7 to commit murder of Balasaheb Jadhav. Further detention of the accused Nos.6 and 7 behind bar is not necessary. The accused Nos.6 and 7 are ready to abide the terms and conditions. Therefore he submitted that accused Nos.6 and 7 be enlarged on regular bail. In support of the submissions, he relied on **Zuber Mushtaque Konhure Vs. State of Maharashtra (2008 All MR (Cri) 2408)**.

6. Per contra, APP submitted that on the basis of last seen theory and the C.C.T.V. footage, the involvement of the accused Nos.6 and 7 in the crime is revealed. He submitted that mere filing of charge-sheet is not change in circumstance. He submitted that the complainant has seen the deceased in the company of the accused. The complainant has specifically stated the name of accused Nos.6 and 7. When the deceased was admitted in the hospital, he was alive. From the co-accused Hanuman, the mobile handset of the deceased was recovered. The witness Shivajirao Jadhav filed affidavit (Exh.7) and stated that the relatives of the accused have threatened him and son of the deceased compromise the matter otherwise they will kill them. Prima facie, there is sufficient material against the accused Nos.6 and 7 to point out their involvement in the crime. There is a possibility of tampering with the evidence. Hence, it is prayed that application for bail be rejected.

7. I have gone through the charge-sheet. From the statements of the witnesses reveals that the complainant along with Shivaji Jadhav, Pralhad Jadhav had been to the Government hospital at Purna. They inquired about the incident with the deceased at that time he told to them that yesterday Tukaram resident of Kalgaon, Ambhore resident of Tadkalas and other three under the pretext to show their land took him on their motorcycle from Shivalaya Bar via Pethshivni near the railway bridge at Purna. There they assaulted him with stone. As per FIR, the deceased has narrated this fact to the complainant in presence of Shivaji Jadhav and Pralhad Jadhav. Witness Govind Kadam has stated that on 03/03/2025 at about 09.00 pm, co-accused Hanuman Ambhore resident of Tadkalas, Pradip Mohite resident of Mahagaon and two other unknown persons had been to shop on the motorcycle. Co-accused Hanuman Ambhore has given him gold ring and told him that he is in need of money. The said gold ring was seized during investigation from goldsmith Bhartarinath Shahane on 07/03/2025. On the say of co-accused Hanuman Ambhore witness Govind Kadam has sold that ring to goldsmith. The said ring which was sold to the goldsmith is of the deceased. Even the mobile handset of the deceased was seized from the possession of co-accused Hanuman Ambhore. In this backdrop, if the seizure of C.C.T.V. footage of different locations have seen, it corroborates the theory of last seen together. The complainant has also seen his father in the company of accused. Therefore, I find no merit

in the submissions made in this regard by the advocate for accused that country liquor shop being a public place, the presence of the accused at that place is not sufficient to connect them with the crime.

8. As per the provisional P.M. certificate, the cause of death is "head injury with blunt trauma to chest with injury to spine". The spot panchnama point out the stone with blood stains marks and the spect in the broken condition were seized. The statement of Shivaji Jadhav and Pralhad Jadhav corroborates the statement of the complainant. The C.C.T.V. footage was seized under the panchnama. As per the contents in the two C.C.T.V. footage panchnama, it reveals that the deceased was found in the company of the accused Nos.6 and 7 on the motorcycle.

9. The deceased has specifically stated the names of the assailants to the complainant, Shivaji Jadhav and Pralhad Jadhav. Besides that the statement made by the deceased in the hospital is corroborated by the C.C.T.V. footage. It further reveals from the charge-sheet that co-accused Hanuman Ambhore has recorded the incident of assault in his Oppo company mobile handset on 03/03/2025. During the investigation, the said mobile handset is seized by the police. From the letter addressed to C.A., it can be gathered that the seized Oppo company

mobile handset and the photographs marked Exh.Z6 and Z7, the presence of the present accused is seen. Even the incident recorded in the mobile handset of the co-accused was sent to C.A. for examination. Therefore, I find that the besides the last seen theory and C.C.T.V. footage, this is an additional evidence against the accused. Even the identification parade panchnama indicates that witness Mukund, Shivajirao Jadhav, Govind Kadam identified the accused.

10. Further more, I find corroboration to the statement of Govind Kadam regarding the transfer of Rs.30,000/- in the bank account of co-accused No.7 Pradip Mohite. The payslip, bank statement of the accused No.7 shows that on 04/03/2025 amount of Rs.30,000/- was deposited in the bank account of the accused. I find the motive behind the crime is to commit dacoity. Therefore, I find that considering facts and prima facie material against the accused, the ratio laid down in the supra case is not helpful. From the statement of the deceased and other circumstantial evidence, I find prima facie sufficient material pointing out the involvement of the accused Nos.6 and 7 in the crime. Considering the affidavit of witness Shivaji Jadhav, I find that the possibility of tampering with the evidence can not be ruled out. Prima facie there is sufficient material on record to point out the involvement of the accused Nos.6 and 7 in the crime. Hence, I find that

accused Nos.6 and 7 are not entitled for regular bail. In the result, I proceed to pass the following order.

: ORDER :

Application U/sec.483 of the Bharatiya Nagarik Suraksha Sanhita stands rejected.
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Date : 24/06/2025.

(D.D. Kurulkar)
Additional Sessions Judge,
Gangakhed.