



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.146 OF 2025

Rupesh Devidas Mokase,
Age 25 years, Occu. Agriculture,
R/o Karanjkheda Jahagir,
Aurangabad.

... Appellant.

Versus

1. State of Maharashtra.

2. Sangita Kailas Sonawane,
Age 50 years, Occu. Sarpanch,
R/o Karanjkheda, Tq. Kannad,
Aurangabad.

... Respondents.

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Advocate for Appellant : Mr. Ghanekar Nilesh S.
APP for Respondent/s-State : Mr. K. K. Naik.
Advocate for Respondent No.2 : Mr. Khizer Patel.

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CORAM : SHAILESH P. BRAHME, J.
DATE : 21.04.2025

ORDER :-

1. Heard finally by consent of the parties.
2. This appeal is preferred challenging rejection of bail application vide order dated 18.11.2024 passed below Exh.9 in Special Case No.584 of 2024. Appellant is behind bars in pursuance of offence bearing Crime No.267 of 2024, registered with Pishor Police Station, District Aurangabad for offences punishable under Sections 103(1), 189(2), 191(3), 190 of

Bhartiya Nyaya Sanhita, 2023, Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and 3/25 of Arms Act.

3. Report was lodged by respondent No.2/mother of the deceased Nilesh, at about 13.47 hours, on 01.08.2024 that the deceased was found lying in a pool of blood in severely injured condition caused by sharp weapon in the agricultural land of the informant. Before sighting the dead body, informant and her husband saw accused persons going towards the village. It is alleged that due to old political rivalry, accused including appellant committed murder of Nilesh.

4. Appellant was arrested on 16.08.2024. Charge sheet was filed on 27.09.2024. Interesting fact of the case is that before the informant could lodge the report on 01.08.2024, at about 7.56, co-accused Mayur Subhash Solunke and Vijay Bapu Wagh presented themselves at Police Station Pishor with *desi* make pistol and the knife and reported that they committed murder of the deceased Nilesh. A statement to that effect of Police Constable Pandhari Hari Ingale was recorded. On similar line, statement of Lalchand Trambak Naglot and who were present in the police station were also recorded during the course of investigation.

5. Mr. Nilesh S. Ghanekar, learned counsel for the appellant submits that appellant is being implicated on sheer suspicion and due to rivalry between informant Ex-sarpanch and one Bhagwan Kashiram Kolhe. It is vehemently submitted that informant and her husband learnt about death or the dead body and preceding that they saw the accused going towards the village. Still no information was given to either police or any other person. FIR was lodged at 1.47 p.m. Even the presence of the accused near the spot was not disclosed to Babasaheb Wagh, Govind Murade and Vishal Zambare who rushed to the spot after hearing commotions of informant. Learned counsel for the appellant refers entries of police station diary to show that after surrendering of two accused, immediately police personnel were sent to the spot of the incident and informant or her husband had occasion to disclose name of the appellant or co-accused. But, that was not done.

6. It is further submitted that seizure panchnama, inquest panchnama and spot panchnama were conducted still informant did not disclose name of the appellant to the police which is very suspicious. It is submitted that eye witness Rushikesh Sandu Sapkal is got up and interested one. He gave false account of the overt tact.

7. Learned counsel further submits that deliberately witness Rushikesh Sapkal gave mobile number of his mother because he was not present at the relevant time. It transpires that CDR of his mobile number shows his location at Padegaon. It is further harped on by the learned counsel that arrest of the appellant was illegal as it was without disclosing grounds of arrest. My attention is adverted to the statements of witnesses Babasaheb Wagh, Govind Murade, Vishal Zambare to show that allegations against the appellant are not free from doubt. Lastly, it is contended that statements under Section 164 cannot be relied upon to deny bail to the appellant.

8. Learned APP tenders on record the relevant papers of investigation. It is submitted that there is cogent material against the appellant to attribute incriminating role. For that purpose, reliance is placed on the statement of eye witness Rushikesh Sapkal, statement under Section 164 of informant and Govind. Post Mortem report corroborates prosecution story. It is contended that CDR collected during the investigation shows that appellant and other co-accused were in touch with each other. There was strong motive of rivalry and prejudice on the caste to eliminate the deceased. It is

contended that appellant's arrest was intimated to the close relative. Therefore, arrest cannot be faulted.

9. Learned counsel Mr. Khizer Patel for respondent No.2 adopts the submissions of learned APP. Additionally, it is submitted that informant and her husband were in deep shock and trauma when their son was found to be dead having been brutally assaulted. It cannot be expected that they would disclose the names of all accused to everybody. No case is made out to grant any relief to the appellant.

10. I have considered rival submissions of the parties and also gone through relevant papers of investigation. Initially, prosecution story based on theory of last seen together. Incident took place on 01.08.2024. For the first time, when statement of Mr. Rushikesh Sapkal was recorded on 07.08.2024, it was transpired that he was eye witness. For six days, he did not come before the police or disclose anybody that he was a witness to the assault on deceased. He was shown to be one of perpetrators in offence Crime No.172 of 2024, registered with Pishor Police Station at the instance of co-accused Mayur Subhash Solunke lodged on 21.05.2024. His statement refers to a mobile which is undisputedly that of his mother.

11. Application submitted by the wife of one of the co-accused, Archana Bhagwan Kolhe on 13.02.2025 to the Superintendent of Police shows that the tower location of the mobile which was registered in his name was shown to be of Padegaon, 90 k.m. away from the spot of the incident. Mentioning of mother's mobile, not disclosing the incident in question for six days and he was involved in offence registered by co-accused Mayur would create serious doubt for the account given by him as an eye witness. His veracity needs to be tested during the course of trial, but relying on his statement, bail cannot be denied to the appellant.

12. Undisputedly, on 01.08.2024 co-accused Mayur and Vijay appeared in the Police Station at Pishor at about 6.50 to 6.55 a.m. with weapons and confessed that murder of deceased Nilesh was committed by them. This fact is corroborated by the statements of police personnel Pandhari Ingale, Lalchand Noglot, Ganesh Kawal, Sanjay Lagad and Kaduba Mhaske. Confession before these personnel might be of extra judicial in nature which may not be substantive piece of evidence. But, has some relevance at this stage to show that perpetrators are co-accused Mayur and Vijay. In such a

situation, very strong overwhelming material is needed to implicate any third person for the murder of Nilesh.

13. Respondents have rightly submitted that informant and her husband were in shock finding that their son was brutally murdered. Under normal course of circumstances, they were not expected to rush to the Police Station for lodging report. However, the sequence of events from 6.50 a.m. to lodging of FIR at 1.47 p.m. is very relevant. There are statements of police personnel referred above to show that immediately on receiving information that murder was committed, police squad was sent to the spot of the incident to verify the truth. Mr. Lalchand Naglot, Ganesh Kawal, Sanjay Lagad, Kaduba Mhaske had been to the spot of the incident. It is not understood as to why informant and her husband could not disclose the name of the appellant and co-accused to these persons. Immediately thereafter, spot panchnama, seizure panchnama and inquest panchnama were conducted, but still names of the perpetrators were not disclosed.

14. Informant is Ex-sarpanch. For the first time in the first information report, the names of the appellant and others are figuring. I am inclined to accept the submission of the learned counsel for the appellant that there is every reason to infer that

implications of the accused other than Mayur and Vijay is after thought and due to previous rivalry.

15. The statements of Aakash Kailas Sonawane shows that there was quarrel on 25.07.2024 with few of the accused persons and he was threatened. This fact was known to the informant, her husband and Aakash. All the accused were seen going towards village at the relevant time on 01.08.2024. Informant and her husband or Aakash could have promptly disclosed names of the accused to somebody including police. But, that has not been done which is very unusual and improbable.

16. I have gone through arrest panchnama of the appellant and notice under Section 47 of the Code. Only offence is mentioned therein. It does not disclose the grounds of arrest.

17. Heavy reliance placed by Mr. Ghanekar on the judgments of Supreme Court in *Vihaan Kumar Vs. State of Haryana and others*, Division Bench of Bombay High Court in *Sachin Mahipati Nimbalkar Vs. The State of Maharashtra* and *Ashish Kakkar Vs. UT of Chandigarh*. I find force in his submission that grounds were not supplied in the notice and arrest can be said to be illegal.

18. Though statements under Section 164 are recorded, there is CDR and possibility of motive, in my considered view, this is not sufficient to deny bail to the appellant. I cannot concur with the reasons assigned in the impugned order. *Prima facie* case is made out that implication of the appellant is after thought and allegations are shrouded with serious doubts. Hence, appellant deserves enlargement on bail. I, therefore, pass following order :

ORDER

- A. The criminal appeal is allowed.
- B. Impugned order below Exh.9 dated 18.11.2024 passed by Additional Sessions Judge, Aurangabad rejecting Criminal Bail Application in Special Case No.584 of 2024 is quashed and set aside.
- C. Appellant **Rupesh Devidas Mokase** shall be released on bail in furtherance of offence bearing Crime No.267 of 2024, registered with Pishor Police Station, District Aurangabad for the offence punishable under Sections 103(1), 189(2), 191(3), 190 of the Bhartiya Nyaya Sanhita, Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act

and 3/25 of the Arms Act on his furnishing P. R. bond of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of like amount on following conditions :

- (i) The appellant shall cooperate with the speedy disposal of the trial.
- (ii) The appellant shall stay away from entire Kannad Taluka, District Aurangabad till final conclusion of trial.
- (iii) The appellant shall report his whereabouts to the Investigating Officer.
- (iv) Appellant shall not tamper or contact with the prosecution witnesses.

(SHAILESH P. BRAHME, J.)

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