



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

BAIL APPLICATION NO.1165 OF 2025

**GAURAV APPA NAIKNAWARE
VERSUS
THE STATE OF MAHARASHTRA**

....
Ms. Sana Raees Khan a/w Mr. P. P. Giri, Mr. Sumit Sharma and Mr. Yogesh
Kasod, Advocate for the applicant
Mr. A. B. Girase, PP for Respondent/State
Mr. Ramraje D. Kawade, Advocate for the informant
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CORAM : SANJAY A. DESHMUKH, J.

RESERVED ON : 08.09.2025

PRONOUNCED ON : 26.09.2025

ORDER :-

1. Heard learned advocates for the respective parties.
2. This is an application for granting regular bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in connection with Crime No.119 of 2024 registered at Bhoom Police Station, District Dharashiv, for the offences punishable under Sections 302, 326, and 34 of the Indian Penal Code, 1860.
3. The prosecution's case is that a quarrel took place between the applicant and Bharat Shinde on 07.05.2024 at around 10:30 a.m., the injured witness Bharat was a polling representative during the Lok Sabha elections. He was going to drink water, at that time, he saw the applicant is

coming from Booth No.154 arguing with the police. When the applicant saw Bharat, he in filthy words questioned him as to why he told the police to seize his mobile phone. He also threatened Bharat that he would see him later. Bharat replied to the applicant that he had not told the police and then said him that it is between you and the police. At that time, the applicant went away from the booth. After half an hour, when Bharat was going to Patsangvi Bus stand, the applicant came to him and started beating him by fist and kick blows. The applicant lifted him and threw him on the ground. When the informant came to know that the applicant had assaulted his cousin Bharat, he, along with his cousins Samadhan and Sharad, rushed there. When the applicant saw them, he ran away from there. They made complaint to the father of the applicant that your son has beaten Bharat. He said that after the voting is over, I will see. When all they were standing at the bus stand, quarrel was started between the applicant and the informant party and at that time applicant's father Appa, his uncle Rajkumar alias Pintu and Datta Naiknavare caught hold Samadhan and Shankar. At that time, applicant took out a knife hidden in his pocket and stabbed Samadhan in the lower part of his chest. As a result of which Samadhan fell down. He also stabbed to the left hand of the informant Shankar with that knife and after that the applicant and the other accused fled away. Thereafter, the informant and Samadhan were admitted in the Hospital. During treatment, Samadhan was declared dead. The report was lodged on the same day.

4. The learned advocate for the applicant submitted that the applicant has no criminal antecedents. He has roots in the society and he will not flee away from the trial. The incident took place all of a sudden and it was not a premeditated act. The applicant be released on bail by imposing appropriate conditions. It is also submitted that the grounds of arrest were not communicated to the applicant in writing and therefore, he is entitled for bail.

5. The learned advocate for the applicant relied upon the following authorities.

a. Vihan Kumar Vs. The State of Haryana & Another, arising out of SLP (Crl.) 13320 of 2024, decided on 07.02.2025, in which it is held that if the procedure under Section 50A of the Code of Criminal Procedure, requiring the communication of the reasons for arrest to the accused is not followed, the accused is entitled for bail.

b. The Directorate of Enforcement Vs. Subhash Sharma, arising out of SLP (Crl) No.1136 of 2023, decided on 21.01.2025, in which it is held that if the fundamental rights of the accused are affected bail must be granted to him.

c. Pankaj Bansal Vs. The Union of India & Ors., in Criminal Appeal Nos.3053-3054 of 2023, arising out of SLP (Crl) No.920-21 of 2023, decided on 03.10.2023, in which it is held that ground of arrest must be furnished to the accused in writing as a matter of course, as that right is conferred to him under Article 22(5) of the Constitution of India.

6. The learned Public Prosecutor Shri A. B. Girase for the State strongly

opposed the application and submitted that the applicant is involved in a serious crime of murder. The applicant is of a hot temper and not only assaulted the informant but also committed the murder of Samadhan Patil with knife. It was a preplanned murder. He submitted that if the applicant is released on bail, the possibility of committing similar nature of crime on his part cannot be ruled out. If the applicant is released on bail, he will certainly pressurize the prosecution witnesses and tamper with the evidence. He lastly prayed to reject the application.

7. The learned Public Prosecutor further submitted that the grounds of arrest were communicated to the applicant in writing. He did not make any complaint regarding the same immediately after being produced before the Magistrate till the argument of the learned advocate for the argument. The applicant did not raise the ground of non-communication of the grounds of arrest at any subsequent stage and in this application also.

8. The learned Public Prosecutor relied upon the following authorities.

a. ***The State of Karnataka Vs. Sri Darshan, reported in 2025 INSC 979,*** decided on 14.08.2025, in which it is held as under:

“20.1.5. While Section 50 of the Code of Criminal Procedure is mandatory, the consistent judicial approach has been to adopt a prejudice oriented test when examining alleged procedural lapses. The mere absence of written grounds does not ipso facto render the arrest illegal, unless it results in demonstrable prejudice or denial of a fair

opportunity to defend.

“20.1.7. In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusations. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such as irregularity is, at best, a curable defect and cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under Section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail.”

b. Kasireddy Upender Reddy Vs. The State of Andha Pradesh & Ors., in Criminal Appeal No.2808 of 2025 arising out of SLP (Crl) No.7746 of 2025, reported in 2025 INSC 768, in which paragraph No.36 reads as under:

“36. If a person is arrested on a warrant, the grounds for reasons for the arrest is the warrant itself; if the warrant is read over to him, that is

sufficient compliance with the requirement that he should be informed of the grounds for his arrest. If he is arrested without a warrant, he must be told why he has been arrested. If he is arrested for committing an offence, he must be told that he has committed a certain offence for which he would be placed on trial. In order to inform him that he has committed a certain offence, he must be told such acts done by him which amounts to the offence. He must be informed of the precise acts done by him for which he would be tried; informing him merely the law applicable to such acts would not be enough.”

9. Nobody will dispute the ratio laid down in the above authorities. It is well settled that each case is to be decided on its own merit and facts of each case are decisive.

10. The earlier application filed by the applicant is withdrawn as the CA report was not received. Perused the charge-sheet, particularly the report, statements of the injured witnesses and other witnesses. The CA report shows human blood is found in the clothes of the applicant. The incident took place in two phases. In the first phase, the applicant lifted Bharat Patil 52 years old man and threw him on the ground. When that overt act was complained by Bharat to the applicant's father, he said that he will consider it after the voting is over. Meanwhile the applicant went to his house and returned with a knife concealed in his pocket. The co-accused caught hold of Samadhan and the informant, Shankar, while the applicant stabbed both of them with the knife. As a result of

which Samadhan sustained serious injuries and subsequently died. This shows that applicant planned and came there with knife intentionally to assault and then committed murder. Two separate incidents of overt acts are committed by the applicant within some hours. The murder of Shankar committed by the applicant for the trivial reason that his mobile handset had been seized by the police during the voting process on the doubt that injured Bharat told that fact to police. In such fact situation, if the applicant is released on bail, then there is possibility that he will pressurize the prosecution witnesses and tamper with the evidence. Furthermore, the possibility of committing of similar nature of crime in the future on the part of this applicant considering his two overt acts cannot be ruled out as he is of hot tamper.

11. As far as the non-communication of the grounds of arrest is concerned, the proforma of arrest panchanama and in the general diary details it is stated that the reasons of arrest, along with rights of accused are communicated to the applicant and his brother-in-law while he was arrested. Despite this, the applicant has not raised any such ground in his earlier or this bail application claiming that the grounds of his arrest were not communicated to him even though he was represented by advocate since beginning from the date of arrest. No any prejudice is shown to have caused to the applicant. The procedural lapses are not ground to grant bail as held in the case of the ***The State of Karnataka Vs. Sri Darshan (Supra)***. In such fact situations, this Court has to consider and balance the rights of both the accused and the victims of the

crime. Considering the serious nature of the crime, the law laid in the authorities of ***Vihan Kumar Vs. The State of Haryana & Another etc., (supra)*** relied upon by the applicant does not support his case for granting bail as his fundamental right is not affected on facts and law also. Further after the judgment of ***Vihan Kumar (supra)*** there is recent judgment of the Hon'ble Supreme Court i.e., ***The State of Karnataka Vs. Sri Darshan (Supra)*** in which law is laid down that bail shall not be granted on technical lapses unless prejudice caused to the accused is shown. Moreover, the issue as to whether the grounds of arrest are required to be communicated in writing or not is currently sub-judice before the Hon'ble Supreme Court. Therefore, the applicant is not entitled to bail on merits and on the ground that the reasons of his arrest were not communicated to him. Considering all these reasons, the application deserves to be rejected. Accordingly, the application is rejected.

12. Considering right to speedy trial of the applicant, the learned Trial Court is directed to proceed with the trial as expeditiously as possible and conclude it as early as possible. However, it is clarified that if any trial is expedited already by the High Court or the Hon'ble Supreme Court that must be concluded first and then conclude this Sessions trial. Needless to mention that Sessions trial means once it is started, it shall not be stopped until its final decision.

[SANJAY A. DESHMUKH, J.]

HRJadhav