



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (BA) NO.690/2025

Samir s/o Nagesh Dongare

..VS..

**State of Maharashtra, thr.PSO PS Rajapeth, Tahsil and District
Amravati**

WITH

CRIMINAL APPLICATION (BA) NO.692/2025

Yash Shashikant Kate

..VS..

**State of Maharashtra, thr.PSO PS Rajapeth, Tahsil and District
Amravati**

WITH

CRIMINAL APPLICATION (BA) NO.699/2025

Trushal @ Dadu s/o Dipak Jambhulkar

..VS..

State of Maharashtra, thr.PSO PS Rajapeth, District Amravati

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

(BA) NO.690/2025

Shri T.U.Tathod, Counsel for the Applicant.

**Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri
N.R.Rode, Additional Public Prosecutor for the State.**

(BA) NO.692/2025

Shri T.U.Tathod, Counsel for the Applicant.

**Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri
N.R.Rode, Additional Public Prosecutor for the State.**

(BA) NO.699/2025

Shri S.V.Sirpurkar, Counsel for the Applicant.

Shri D.V.Chauhan, Public Prosecutor (Senior Counsel) assisted by Shri N.R.Rode, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 25/08/2025

PRONOUNCED ON : 08/09/2025

COMMON ORDER

1. By these applications under Section 483 of the BNSS, the applicants seek regular bail in connection with Crime No.429/2024 registered with the non-applicant/police station for offences under Sections 103(1), 189(2), 191(2), 191(3), 190, 61(2) of the Bharatiya Nyaya Sanhita and under Sections 4 and 25 of the Arms Act and under Sections 135 and 142 of the Maharashtra Police Act.

2. Applicants Samir Nagesh Dongare and Trushal @ Dadu Dipak Jambhulkar are arrested on 22.7.2024, whereas, applicant Yash Shashikant Kate is arrested on 19.7.2024 and since then they are in jail.

3. The crime is registered on the basis of a report lodged by Nayan Amol Mandale, who is younger brother of Rohit Mandale (the deceased). As per his report, 19.7.2024 is his birthday and for celebrating the same, he along with his friends gathered near Kedia Nagar Garden along with the deceased on 18.7.2024. The deceased was waiting along with his 2-3 friends at the gate of the said garden with Cake. At the relevant time, one white colour car came in speed and dashed against the deceased due to which he fell down and was in a pool of blood. As soon as the deceased fell down, 4-5 persons came out of the car including the applicants and started assaulting the deceased with kicks and fist blows. The deceased was assaulted with iron rafter and a big stone on his head. At the relevant time, other accused persons came on the spot holding weapons like swords and knives in their hands. As per the allegations, due to the previous enmity, the applicants and the other co-accused caused death of the deceased.

On the basis of the said report, the police registered the crime against the applicants.

4. Heard learned counsel Shri T.U.Tathod and learned counsel Shri S.V.Sirpurkar appearing for respective applicants and learned Public Prosecutor Shri D.V.Chauhan for the State.

5. Learned counsel for the applicants submitted that involvement of the applicants in the assault is doubtful. The vital allegations of assault is levelled against co-accused namely Karan Dendwal who is already released on bail. Applicant Trushal though named in the FIR, no specific role is attributed to him. The CCTV panchanama regarding the footage collected from the house of co-accused Karan Dendwal shows that on the day of the incident, at about 11:30 pm, he was in the house. So, the entire genesis of the prosecution case itself is doubtful. The statements of the eyewitnesses are contrary to the CCTV Footage. The possibility of false

implication cannot be ruled out by taking disadvantage of the incident as there was previous dispute between the applicants and the deceased. The deceased was accused in murder case on an allegation that he caused death of brother of co-accused Karan Dendwal. Learned counsel appearing for applicants invited my attention to various statements of witnesses and order passed by the Sessions Court releasing co-accused Karan Dendwal on bail. Thus, they submitted that on the ground of parity, the applicants are entitled to be released on bail.

6. In support of their contentions, learned counsel appearing for respective applicants placed reliance on following decisions:

1. Ajay Dyaneshwar Bhoir vs. State of Maharashtra and anr, reported in 2018 SCC OnLine Bom 16432;

2. Chikkrange Gowda and ors vs. State of Mysore, reported in AIR 1956 SC 731;

3. Criminal Appeal arising out of Special Leave Petition (Cri.) No.10587/2023) decided by the

Hon'ble Apex Court on 17.12.2024 (Ayub Khan vs. The State of Rajasthan); and

4. Masalti and ors vs. State of UP, reported in AIR 1965 SC 302.

7. *Per contra*, learned Public Prosecutor for the State vehemently submitted that the applicants were members of “unlawful assembly” and in furtherance of their common object, they committed the offence. Being members of the “unlawful assembly,” they are liable for the act committed by the co-accused. The ground of parity is not available to the applicants. The nature of injuries sustained by the deceased is sufficient to show that the applicants, who are members of the “unlawful assembly,” in furtherance of their common object, caused the death of the deceased. The involvement of the applicants reveals during the investigating. One of applicants Samir s/o Nagesh Dongare was externed by externment order dated 15.3.2023. He was externed for 2 years by the said order. He entered into the vicinity by

violating the condition, “not to enter into Amravati City or Amravati Rural Area within the jurisdiction of the Deputy Commissioner of Police, Parimandal No.2,” imposed on him. He entered by contravening the said directions and committed the offence. For all above these reasons, the applications of the applicants deserve to be rejected.

8. On hearing both the sides and perusing investigation papers, it reveals that the deceased was accused in a murder case of brother of co-accused Karan Dendwal and on that count there was previous enmity between them. As per the allegations, on 18.7.2024, at about 11:30 pm, when the deceased along with other prosecution witnesses was standing at the gate of Kedia Nagar Garden, one car gave dash to him and from the said car the applicants along with co-accused Karan Dendwal got down and started assaulting the deceased. The allegation of giving blows by iron rafter is against co-accused Karan Dendwal. It is further alleged that other

co-accused Bhushan Watkar has thrown a big stone on the head of the deceased. At the relevant time, Sonu, Yash Kate, Anshu Sonone, and Nitin Ingole and other co-accused persons came at the spot holding swords and knives in their hands.

9. Thus, as per recital of the FIR, presence of all applicants is narrated by the informant at the spot of the incident.

10. The statements of eyewitnesses also reiterated the same.

11. During investigation, the investigating officer collected the CCTV Footage from the house of co-accused Karan Dendwal which shows that on 18.7.2024 said Karan has left his house at 8:14 pm and returned home at 21:26 hours and, thereafter, he was seen leaving the house at 00:03 hours. On the basis of the said CCTV Footage, said Karan was released on bail by the learned

Sessions Judge. On that ground, the parity is claimed by the applicants.

12. Insofar as authenticity of the CCTV Footage is concerned, the same is a matter of evidence.

13. At this stage only question is that whether the applicants are entitled to be released on bail on the ground of parity.

14. The Hon'ble Apex Court, in the case of **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana, reported in (2021)6 SCC 230**, observed that, "parity while granting bail must focus upon role of the accused. Merely observing that another accused who was granted bail was armed with a similar weapon is not sufficient to determine whether a case for the grant of bail on the basis of parity has been established. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance".

15. Learned counsel for the applicants placed reliance on the decision in the case of **Masalti and ors vs. State of UP** *supra*, wherein the Hon'ble Apex Court has laid down test to ascertain whether persons are members of "unlawful assembly" and held mere presence in an assembly does not make a person, who is present, a member of an unlawful assembly unless it is shown that he had done something or omitted to do something which would make him a member of an unlawful assembly, or unless the case falls under Section 142 of the IPC. the said observation cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly, and he entertained along with the other members of the assembly the common object as

defined by Section 141. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. In fact, Section 149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence is a member of the same

assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by Section 149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly.

16. The similar observations are made by the Hon'ble Apex Court in the case of **Chikkrange Gowda and ors vs. State of Mysore** *supra* that, "the first essential element of Section 149 is the commission of an offence by any member of an unlawful assembly; the second essential part is that the offence must be committed in prosecution of the common object of the unlawful assembly, or must be such as the members of that assembly knew to be likely to be committed in prosecution of the common object.

17. Whether the applicants in the present applications are members of "unlawful assembly" is a matter of evidence.

18. Admittedly, co-accused Karan Dendwal to whom the overt act is attributed is already released on bail. The State has not challenged the said order.

19. Insofar as applicants Trushal @ Dadu Dipak Jambhulkar and Yash Shashikant Kate are concerned, except their presence, no other role is attributed to them.

Whether they were sharing common object or not and whether they are having knowledge that the co-accused were intending to cause death of the deceased is also a matter of evidence.

At this stage, considering no overt act is attributed to them, Criminal Application (BA) No.692/2025 and Criminal Application (BA) No.699/2025 deserve to be allowed.

20. Applicant Samir s/o Nagesh Dongare, was externed by the externment dated 15.3.2023 for a period of 2 years and he was restricted from entering into the vicinity of Amravati City or Amravati Rural Area within

the jurisdiction of the Deputy Commissioner of Police, Parimandal No.2. Despite the said order, his presence is witnessed by the witnesses on 18.7.2024 which sufficiently shows that he contravened the said order and his involvement reveals in the commission of the crime and, therefore, his application for grant of bail deserves to be rejected.

21. In this view of the matter, I proceed to pass following order:

ORDER

(1) Criminal Application (BA) No.692/2025 and Criminal Application (BA) No.699/2025 are **allowed**.

(2) Applicants **Trushal @ Dadu Dipak Jambhulkar** and **Yash Shashikant Kate** shall be released on bail on their executing a P.R.Bond in the sum of Rs.1.00 lac by each of them and one solvent surety of the like amount by each of them in connection with Crime No.429/2024 registered with the non-applicant/police station for offences under

Sections 103(1), 189(2), 191(2), 191(3), 190, 61(2) of the Bharatiya Nyaya Sanhita and under Sections 4 and 25 of the Arms Act and under Sections 135 and 142 of the Maharashtra Police Act.

(3) They shall attend the concerned police station twice a month i.e. on 1st and 15th of every month and the police station officer shall record their presence.

(4) They shall attend the proceedings before the trial court without seeking any exemption, unless there are exceptional circumstances.

(5) They shall not directly or indirectly make any inducement or threat or promise to any witnesses acquainted with the facts of the case.

(6) They shall not indulge in the similar type of activities and single registration of the offence would lead to cancellation of bail granted in their favour.

(7) Criminal Application (BA) No.690/2025 of applicant Samir Nagesh Dongare is hereby **rejected**.

Applications are **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!