



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 383 OF 2026.

1.Datta Ghanshyam Pawar

2.Ajay Ghanshayam Pawar

-Versus-

State of Maharashtra.

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

Court's or Judge's orders

Shri S.V Sirpurkar, Advocate for the Applicant.
Shri A.R. Chutke, APP for the Non-applicant- State.
Shri A.C. Dharmadhikari, Advocate Assisting Prosecution

CORAM : M.M. NERLIKAR, J.

DATE : APRIL 10, 2026.

Heard.

2. The applicant came to be arrested in connection with Crime No.292/2025 registered with the Tamgaon Police Station, District Buldhana for the offences punishable under Sections 189(2), 189(4), 191(2), 191(3), 190, 103(1), 118(1), 333, 351(3), of the Bharatiya Nyaya Sanhita, 2023 (BNS). Charge sheet came to be filed and Sections 61(2), 49, 118(2), 324(6) of the BNS and Section 135 of the Maharashtra Police Act, came to be added.

3. The first information report came to be lodged by Prajwal Subhash Mohe, alleging that on 28.08.2025 the applicants' party have assaulted the informant and others on account of an old dispute between them with the help of iron rods, spear and sharp weapon like knife, wherein brother of the informant Rushikesh lost his life.

4. The learned Counsel for applicants submit that this Court vide order dated 26.03.2026 has granted bail to the co-accused in Criminal Application No. 172/2026 who has played a more aggravated role in the assault. The contents of the first information report demonstrates that no role is attributed to present applicants regarding the assault made to the deceased Rushikesh. The only allegation in the first information report against applicants is, that they were present on the spot of incident allegedly armed with an iron rod. It is also alleged that they along with others came running towards the informant's party and started assaulting the members of informant's party. However, no specific overt act is attributed to present applicants and the allegations are general in nature. Therefore applicants pray for grant of regular bail considering their role, as the investigation is over and charge-sheet is filed.

5. On the other hand, the learned APP appearing for the State and learned Counsel assisting the prosecution vehemently opposed the application on the ground that the applicant's party formed an unlawful assembly with a common object, went to the house of the informant along with weapons and assaulted the informant and other persons. At this stage the role of present applicants cannot be bifurcated from other co-accused persons, in view of the common object.

6. The learned Counsel assisting the prosecution has placed a strong reliance on the judgment of the Apex Court in the case of **Shobha Namdev Sonavane .vrs. Samadhan Bajirao Sonvane and other**, (2026 SCC OnLine SC 291), particularly paragraph no.27 which reads as under :

“27. In this backdrop, clearly, the approach adopted by the High Court at the stage of considering bail recording that the prosecution was required to indicate the individual role of the accused in the incident, and that failure to do so, entitled the respondents-accused to bail, is erroneous on the face of record. In a case where the offence is committed by an unlawful assembly, each member of the assembly is equally responsible for the acts committed in furtherance of the unlawful object. The common object of the assembly being to assault the deceased Namdev on account of the pending civil litigation, each

member of the unlawful assembly was thus equally liable and responsible for the offending acts. We may note that the looking to the large number of injuries, caused to the deceased [referred to infra], even the plea of over implication was not tenable.”

7. Reliance is also placed on the judgment of Supreme Court in case of **Nitya Nand .vrs. State of U.P. and another (2024) 9 SCC 314**, particularly paragraph no.43, which reads as under :

“43. This brings us to the pivotal section which is Section 149 IPC. Section 149 IPC says that every member of an unlawful assembly shall be guilty of the offence committed in prosecution of the common object. Section 149 IPC is quite categorical. It says 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 committing of that offence, is a member of said assembly; is guilty of that offence. Thus, if it is a case of murder under Section 302 IPC, each member of the unlawful assembly would be guilty of committing the offence under Section 302 IPC.”

8. It was also submitted that present applicants along with others prevented the informant's party to take Rushikesh to the hospital for timely treatment, which led to his death.

Therefore, as there is serious allegation of murder and applicants have played an active role in the entire episode, the application be rejected.

9. I have considered the rival submissions and perused the record. Admittedly this Court vide order dated 26.03.2026 has granted bail to the co-accused in Criminal Application No.172/2026 i.e. Mangalsingh Solanke and Akash Managalsingh Solanke. The fact remains that present applicants have played a lesser role in the entire episode.

10 So far as judgments in case of Shobha Namdev Sonavane and Nitya Nand (supra) are concerned, the same are not applicable to the facts of the case in hand considering the role the present applicants in the entire episode. One glaring fact in the present case is that, it cannot be said that the common object of the assembly was to assault the deceased Rushikesh due to pending litigation, as in fact Rushikesh had joined on the spot of incident at a later point of time. It is possible that the accused persons had only assembled to teach a lesson to the informant's party. Further it appears that no specific overt act is attributed to present applicants in causing the death of Rushikesh. Applicants were arrested on 29.08.2025. Mere presence on the spot of

incident armed with an iron rod is not sufficient to keep applicants behind bars. Considering the role played by applicants and as the investigation is complete, charge-sheet is filed coupled with the fact that the co-accused persons have been released on bail by this Court, I am inclined to grant bail on certain terms and conditions. Hence, the following order :

ORDER.

- (i) Criminal Application is allowed and disposed of.
- (ii) Applicants /accused (1) Datta Ghanshyam Pawar and (2) Ajay Ghanshyam Pawar be released on regular bail in connection with Crime No.292/2025 registered with the Tamgaon Police Station, District Buldhana for the offences punishable under Sections 189(2), 189(4), 191(2), 191(3), 190, 103(1), 118(1), 333, 351(3), 61(2), 49, 118(2) and 324(6) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Section 135 of the Maharashtra Police Act on their furnishing P.R. Bond of Rs.50,000/- each with two sureties in the like amount.
- (iii) The accused shall not enter within the territorial jurisdiction of village Niwana, Tq. Sangrampur, District Buldhana till the completion of the trial.
- (iv) The accused shall not directly or indirectly

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make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

- (v) The accused shall provide their residential address and cell number to Police Station concerned and shall not change their place of residence without prior intimation to the Investigating Agency.
- (vi) The accused shall attend each and every date of trial regularly. If they fail to attend the trial for one single date, or fail to comply with the aforesaid conditions, their default would entail the State to ask for cancellation of bail.
- (vii) The above observations are prima facie in nature, and restricted for the purpose of deciding this application. The Trial Court shall not get itself influenced by said observations, during the course of trial.
- (viii) Misc. Applications, if any, are also disposed of.

JUDGE