

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

CRIMINAL APPLICATION (BA) NO.403 OF 2018

(Baban Sadashiv Bichkule and others Vs. State of Maharashtra thr. PSO PS
Hiwarkhed, Tah. Khamgaon, Dist. Buldhana)

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

Court's or Judge's orders.

Shri S.D. Chande, Advocate for Applicants.
Shri V.A. Thakre, APP for Respondent-State.

CORAM: ROHIT B. DEO, J.

DATE: 11th JUNE, 2018.

The applicants 1, 3 and 4 are in custody since November, 2017 and the applicant 2 since 14.03.2018 in connection with Crime 208/2017 for offence punishable under sections 302, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and section 135 of the Bombay Police Act registered at Police Station Hiwarkhed, District Yavatmal.

The case of the prosecution is that the applicants and the other 13 co-accused were celebrating the election victory of their candidate as Upa-Sarpanch. Fire crackers were being burst in the course of the victory procession to which the deceased and the family members of the deceased objected on the ground that the fire crackers were disturbing the cattle. An altercation ensued during the course of which the present applicants allegedly assaulted the deceased by sticks. The submission of the learned

counsel Shri Chande is that the applicant 1 Baban also suffered a head injury and lodged report. The submission is that according to the postmortem report the deceased suffered a single head injury, with the result that the prosecution version of a concerted assault by the applicants on the deceased is rendered suspect. The learned A.P.P. would submit that since the case of the prosecution is that the assault was with common object and section 149 of the IPC is attracted, it is not relevant as to who dealt the fatal blow which caused death.

The submission of the learned A.P.P. is well founded. However, *prima facie* it does not appear to be in dispute that the incident occurred on the spur of the moment over a trivial issue of bursting fire crackers. It is not even the case of the prosecution that the applicants were armed. The sticks used for assault were allegedly picked up from the spot. Considering the nature of the accusation and the material on record, further incarceration of the accused in custody may not be appropriate since concededly, the incident occurred on the spur of the moment pursuant to an altercation and fire wood was picked from the spot and used in the assault which has caused, according to the postmortem report a single head injury to the deceased.

The application is allowed.

The applicants are released on bail on each of them furnishing a personal bond of Rs.15,000/- with a solvent surety of the like amount.

The applicants shall not tamper with the

evidence nor shall applicants directly or indirectly attempt to influence the witnesses in any manner.

The applicants are cautioned not to indulge in any act which may vitiate the peace in the village. The State is at liberty to move for cancellation of bail if any condition is violated.

With liberty to the State to apply for modification and/or cancellation, the application is allowed.

The application is disposed of accordingly.

JUDGE