

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

Criminal Application (ABA) No. 92 of 2021

(Vitthal S/o Bhivsan Kavhar and ors. ..vs.. State of Maharashtra through P.S.O., Shirpur,
Tq. Malegaon, Distt. Washim)

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

Court's or Judge's orders

Mr. D. G. Dhoble with Shri R. L. Kadu, Advocates for the applicants
Mr. S. A. Ashirgade, APP for the State

CORAM : ROHIT B. DEO, J.

DATED : 18-02-2021

Heard.

2. The applicants are apprehending arrest in Crime 14/2021 registered with Police Station, Shirpur, Tq. Malegaon, District Washim for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 504 and 506 of the Indian Penal Code.

3. The crime is registered on the basis of report dated 25-1-2021 lodged by Mrs. Jayshree Gajanan Kavhar.

4. She alleged that her husband Gajanan and father-in-law were brutally assaulted with axe and sticks. While the husband of the informant Gajanan suffered head injury, her father-in-law Arjun expired while being treated for head injury caused by the axe blow.

5. The applicants herein are specifically named as the members of the assembly which participated in the assault.

6. The learned counsel for the applicants submits that the role attributed to the applicants is assault with sticks, and therefore, they cannot be implicated for the grave offence punishable under Section 302 of the Indian Penal Code. The submission is considered only for rejection.

7. Section 149 of the Indian Penal Code is invoked. *Prima facie*, it appears that the applicants were members of an unlawful assembly with common object. In this view of the matter, the weapons used and the precise injuries caused by the applicants would hardly be relevant particularly at this stage. Every member of the unlawful assembly is deemed to be responsible for the consequences of the acts of the other members, if there was common object which in the facts of the case does appear to be present.

8. Learned counsel then submits that there is a counter report lodged concerning the same incident. The alleged counter report, if at all, is hardly relevant. No serious injury is caused to any member of the unlawful assembly which caused the death of Arjun. In particular, the applicants have suffered no injuries. The allegation is grave and if convicted, the sentence would be severe. The investigation is ongoing. The

Investigating Officer deserves an opportunity to arrest and custodially interrogate the applicants, in the absence of which interrogation, the investigation may be rendered directionless. The applicant 3 Ramesh Bhivsan Kavhar allegedly used an iron pipe which is to be recovered. The sticks which are used by the applicants 1 and 2 shall also have to be recovered. In no view of the matter can discretion be exercised in favour of the applicants.

9. The application is rejected.

JUDGE

wasnik