

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

CRIMINAL APPLICATION (BA) NO.964/2021

(Madhav Ramchandra Kavhar VS. 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

Mr.Mir Nagman Ali, Advocate for the applicant.
Mr. N.R.Rode, APP for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 27-09-2021

The applicant is arraigned as accused 2, alongwith eight others including one juvenile in conflict with law, in Crime 14/2021, registered with Police Station, Shirpur, District Washim, for offences punishable under sections 143, 147, 148, 149, 302, 307, 341, 504 and 506 of the Indian Penal Code.

2. The crime is registered on the basis of report dated 25.1.2021 lodged by Smt. Jayashree Gajanan Kavhar, who is the wife of injured Gajanan.

3. Broadly, the prosecution case is that at 2.00 p.m. or thereabout Gajanan was assaulted by the accused, who were armed with axe, iron pipes and lathis. The prosecution case is that the applicant, Prakash Kavhar and Deorao Kavhar were armed with axe. Gajanan's father Arjun intervened in the altercation only to be assaulted on the head with axe. This axe assault is

attributable to Deorao, Madhav and Prakash. It is further alleged that even after Arjun collapsed, the other accused continued to assault him with lathis. Gajanan too suffered injuries on the head and blow was inflicted by accused Vitthal, is the statement of Gajanan's mother.

4. Arjun succumbed to the injury suffered in the assault, while being treated at Aurangabad Hospital on 27.1.2021. The learned counsel for the applicant Mr. M.N.Ali would further submit that the statements of witnesses that even after the deceased collapsed, he was assaulted with lathis, reflect an obvious attempt to rope in all the members of the family. It is further submitted that the altercation, was a free for all fight and the applicant too suffered an injury, which is a lacerated wound. Mr. Ali invites my attention to the injury certificate which indeed refers to lacerated wound with dimension 5 x 5 cm which injury was bleeding and the bone was exposed.

5. In so far as the injured Gajanan is concerned, holistically reading of the statements of the witnesses does appear to be prima facie material to connect the applicant with the assault on Gajanan. I have already noted that in so far as Arjun is concerned, who inflicted the blow, which proved fatal ultimately, is blurred and the picture is not clear probably due to tendency to over-implicate and exaggerate. It is true, as argued by

Mr. Rode, that since Section 149 of the Indian Penal Code is invoked, the particular role played in the assault may be irrelevant. However, before Section 149 of the Indian Penal Code can be invoked effectively, the prosecution will have to prove several foundational facts, *inter alia*, that there was an unlawful assembly, with common object and that the applicant was a member of the unlawful assembly pursuant to such object, which are all aspects, which the Trial Court would consider after the evidence is adduced. At this stage, considering the material on record, I am satisfied that a case for bail is made out particularly since the applicant has no criminal antecedents. However, certain conditions will have to be imposed since the family of the applicant and that of the victim are relatives and neighbours.

6. The application is allowed.

7. The applicant shall be released on bail on executing personal bond of Rs.25,000/- with a solvent surety of like amount.

8. The applicant shall not enter the territorial jurisdiction of village Shirpur, till conclusion of the trial.

9. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

10. The applicant shall attend each date of hearing scrupulously.

11. The applicant shall not leave the country without the permission of the trial Court.

12. Any breach of these conditions, may ipso facto entail cancellation of bail, if the motion is moved.

JUDGE

ambulkar