

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

21 CRIMINAL REVISION APPLICATION NO.100 OF 2022

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| 1. Vinod Vahrya Pawara,
Age-20 years, Occu- Farmer, | ...APPLICANTS |
| 2. Arjun Vahrya Pawara,
Age-24 years, Occu-Farmer, | |
| 3. Sabrya @ Sharad Jermal Pawara.
Age-22 years, Occu-Farmer, | |

All R/o. Valval Cha Savripada,
Tq. Dhadgaon, Dist. Nandurbar

VERSUS

The State of Maharashtra, Through the Police Station Officer, Dhadgaon, Tq. Dhadgaon, Dist. Nandurbar	...RESPONDENT
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Mr. Priteshkumar Jain, Advocate for the applicants
Mr. S. P. Tiwari, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 12th September, 2022

JUDGMENT:

1. Heard for final disposal at the admission stage by consent of the parties.

2. Heard the learned counsel for the applicants and the learned APP for the respondent/State.

3. The present application is preferred against the order dated 22-02-2022 passed by the learned Additional Sessions Judge, Shahada in Sessions Case No. 41/2021, thereby rejecting the application of the present applicants for discharge. These applicants are accused Nos. 2 to 4. After filing of the charge-sheet case is registered as Sessions Case No.41 of 2021 at Shahada. The applicants preferred an application below Exh.4 in the Sessions Court for discharge. The learned Additional Sessions Judge, Shahada by way of impugned order has rejected the said application.

4. Learned counsel for the applicants submitted that there is no material at all to connect these applicants with the offences alleged. He states that the present applicants are implicated only on the basis of the statement of co-accused i.e. accused No.1 namely Virsing Pawara. He pointed out from the

FIR that initially the FIR was registered against the unknown persons. It is only thereafter on the basis of suspicion accused No.1 came to be arrested. Except the statement of accused No.1, there is no material to show involvement of these applicants. He states that assuming the material produced alongwith charge-sheet if considered as it is, still there is no material sufficient enough to frame the charge against the present applicants.

5. Heard the learned APP for the respondents. He pointed out that there is no material against these applicants. From the order impugned, he pointed out that the court has also considered the aspect that there are abrasions on the person of the present applicants. He pointed out that applicant No.1 and 2 were examined by the Doctor in the Civil Hospital, Dhadgaon, Dist. Nandurbar and issued certificates which shows healed abrasion mark on the finger of right hand of Arjun was found whereas healed abrasion marks were noticed on the right index, middle and 4th finger and on 3rd finger of left hand of the Vinod. He states that it is for these applicants accused persons to

explain as to how those injuries are received. He states that these are the injuries which the applicants have received as the deceased must have resisted act of the applicants. He further submits that at this stage no evidence needs to be appreciated or discarded straight way. In his submission, therefore, the prosecution has to establish it in trial. It is open for the accused to take proper defense in the trial and he prays for dismissal of the application.

6. At this stage learned counsel for the applicants relies upon the judgment reported in Laws (Bom) 2007 8 138 in the case of Shivdas Alias Betu Narayan Boddewar Vs State of Maharashtra, wherein this court was pleased to allow the application for discharge by considering various judgments. He further relies upon on the judgment reported in Laws (Bom)2007 10 186 in the case of Banot Ravi Vyankatram Vs State of Maharashtra. The learned counsel for the applicants in view of the position further concedes that there appears to be some material against the applicant Nos. 1 and 2. So far as the

applicant No.3 Sabrya @ Sharad Jermal Pawara there is no material at all. The learned APP also could not show any material against applicant No.3.

7. Considered the argument of both the parties and perused the material on record.

8. It appears that initially all the applicants are arrayed as accused persons only in view of suspicion that to based upon the statement of accused No.1 Virsing. There is some material in the form of injury certificates in the case of Vinod and Arjun. At this stage this court cannot go into the aspect of evidentiary value and the probable defenses those are available to the accused persons. So far as the application of Vinod and Arjun is concerned, this court is of the opinion that there is no merit in their application. In so far as the case of applicant No.3 Sabrya @ Sharad Jermal Pawara is concerned, it is seen that there is absolutely no material on record except suspicion expressed by the persons whose statements are recorded by the police. There

is no any other material against Sabrya @ Sharad Jermal Pawara sufficient to frame the charge against him. Hence the following order:

ORDER

- a] The application is partly allowed.
- b] The order passed by the learned Additional Sessions Judge, Shahada dated 22-02-2022, on the application below Exh.4 in Sessions Case No. 41/2021 is modified.
- c] The impugned order dated 22-02-2022 to the extent of applicant Nos. 1-Vinod Vahrya Pawara and applicant No.2-Arjun Vahrya Pawara is confirmed. Their discharge application is rejected.
- d] The application to the extent of applicant No.3- Sabrya @ Sharad Jermal Pawara stands allowed in terms of prayer clause (D).

e] Rule partly made absolute.

9. Needless to say that these observations are only for the purpose of discharge application.

[KISHORE C. SANT, J.]

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