

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

CRIMINAL APPLICATION (BA) NO.247 OF 2023
Dipak alias Fattya Dagdu Shinde Vs. State of Maharashtra
AND
CRIMINAL APPLICATION (BA) NO.248 OF 2023
Jayendra alias Jay Pawar 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.

Ms Garima S. Jain, Advocate h/f Shri S.V. Sirpurkar, Advocate for applicants.
Shri S.M. Ghodeswar, APP for non-applicant/State in BA No.247/23.
Shri I.J. Damle, APP for non-applicant/State in BA No.248/23.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JULY 21, 2023.

Both the applications are preferred by the applicants namely; Dipak alias Fattya Dagdu Shinde and Jayendra alias Jay Pawar for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.179/2022 registered with Police Station, Raipur, District Buldhana for the offences punishable under Sections 143, 147, 148, 149, 302, 323, 324, 504, 506 read with Section 149 of the Indian Penal Code. The applicant – Dipak is arrested on 22.07.2022 whereas applicant – Jayendra is arrested on 20.07.2022 and since then they are in jail.

2. The crime is registered on the basis of report lodged by Nirabai Machmal Bhosale. From the recitals of the FIR, it reveals that there is previous enmity between the family of the informant and the accused persons. On 18.07.2022, the

informant's got into heated discussion with one of the co-accused Gais Fathlya. On noticing the same, the informant alongwith the deceased intervened in the said quarrel and left the place. It is further alleged that on the day of the incident when she was alongwith her family members proceeding in auto-rickshaw all the accused alongwith the present applicants stopped their vehicle on the middle of the road and started abusing the informant and her family members. They were assaulted by means of woden stick, fist and kick blows. On the basis of said report, Crime No.179/2022 was registered. During said scuffle son of the informant namely; Sachin has sustained the head injury and he succumbed to death. Due to his death, the offence came to be added for the offence punishable under Section 302 of the IPC.

3. It is the contention of the applicants that name of the applicant namely Dipak alias Fatya Dagdu Shinde is not mentioned either in FIR or any of the statements of the eye witnesses. As far as the applicant – Jayendra alias Jay Pawar is concerned, only allegation against him is that he has assaulted the deceased as well as all the prosecution witnesses by means of fist and kick blows. Considering the role of the present applicants, they prayed for grant of bail as their further custody is not required for the investigation purpose and no purpose will be served by keeping them behind bars.

4. The said applications are strongly opposed by the

State on the ground that there is a *prima facie* material against the applicants. The alleged incident has taken place in the middle of the road and 70 to 80 eye witnesses have witnessed the said incident. Though the investigation is completed, however, considering the nature of offence, the applications deserve to be rejected.

5. Heard Ms Garima Jain, learned counsel for the applicants. She reiterated the contentions and submitted that the name of the applicant – Dipak is not mentioned in the FIR. No role is attributed to him. As far as the role of the other applicant i.e. Jayendra Pawar is concerned, only allegation is made against him is that he has assaulted all the prosecution witnesses and deceased by means of fist and kick blows. Now investigation is completed and charge-sheet is filed. Nothing is to be recovered from the present applicants. No purpose will be served by keeping them behind bars. The statements of the eye witnesses attribute similar role to them. Considering their role, they be released on bail.

6. Learned APP reiterated the contentions and strongly opposed the applications on the ground that if the applicants are released on bail they will tamper with the prosecution evidence. There is a direct evidence against the present applicants and prays for rejection of the applications.

7. Having heard both sides and on perusal of the investigation papers, admittedly, the name of the applicant –

Dipak is not mentioned in the FIR. As far as the role attributed to the other applicant – Jayendra is concerned, it is alleged that he has assaulted the prosecution witnesses by means of fist and kick blows. Now investigation is completed and charge-sheet is already filed. All the witnesses are from the same vicinity. Considering the apprehension raised by the State the conditions can be imposed on the applicants regarding not to live in the same vicinity, till conclusion of the trial. Considering the role of the present applicants, their bail applications deserve to be allowed by imposing certain conditions. Hence, I proceed to pass the following order:

ORDER

- i. Both Criminal Applications Nos.247 and 248 of 2023 are allowed.
- ii. The applicants – Dipak alias Fattya Dagdu Shinde and Jayendra alias Jay Pawar, be released on bail in connection with Crime No.179/2022 registered with Police Station, Raipur, District Buldhana for the offences punishable under Sections 143, 147, 148, 149, 302, 323, 324, 504, 506 read with Section 149 of the Indian Penal Code, 1860, on executing PR bond in the sum of ₹25,000/- each with one solvent surety in the like amount.
- iii. The applicants shall furnish the cellphone number and address with address proof. In addition, the applicant shall

also furnish the names of his two relatives and their address with address proof.

iv. The applicants shall not enter into vicinity of Sakegaon village, Taluka Chikhali, District Buldhana without prior permission from the Court, till conclusion of the trial.

v. The applicants shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the crime.

With this, the applications are disposed of.

JUDGE

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