

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (BA) NO. 1419 OF 2022

(Purushottam Devraoji Bawane V/s State of Maharashtra)

WITH

CRIMINAL APPLICATION (BA) NO. 30 OF 2023

(Sanjay Motiram Mohature V/s State of Maharashtra)

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. U. J. Deshpande, Advocate for Applicant in BA No.1419/2022.

Mr. R. M. Daga, Advocate for Applicant in BA No.30/2023.

Mr. I. J. Damle, APP for Non-applicant/State in BA No.1419/2022.

Mr. A. M. Kadukar, APP for Non-applicant/State in BA No.30/2023.

CORAM : ANIL L. PANSARE, J.

DATE : JANUARY 31, 2023.

. Heard learned Counsel for the parties.

2. By these Applications, the Applicants are seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 818/2021 registered with Police Station, Darwaha, District Yavatmal for the offences punishable under Section 302, 323 read with Section 34 of Indian Penal Code.

3. Having heard learned Counsel for the both sides, it appears that there are in all four accused namely, (i) Purushottam Bawane (Head Constable/Day Officer); (ii) Sanjay Mohature (Police Constable/Station Diary Incharge); (iii) Sachin Jadhav (Police Constable/Writer); and (iv) Shabbir Pappuwale (Police Constable/Driver). The accusation against the four police officials is that they have committed murder of one Sk. Irfan Sk. Shabbir while he was in police custody.

4. It is the case of the prosecution that on 6/7/2021 at about 18.25 hours the police station received a call from unknown person stating that some persons are pelting stones towards the vehicles near Taroda village. Pursuant to the said information, Police Sub Inspector Vispute (Day Officer), Accused No.2 - Head Constable Purushottam Bawane, B. No. 221 and Accused No.3 - NPC Sachin Jadhav, B. No. 1360 left for the spot. The station diary entry to that effect was made. The next station diary entry dated 6/7/2021 recorded at 18.27 hours indicates that three persons were seen involved in scuffle near Taroda village. The names of these three persons are (i) Sk. Irfan Sk. Shabbir (deceased); (ii) Amir Khan Shamir Khan; and (iii) Sk. Golu Sk. Shabbir.

5. The prosecution has relied upon the statements of

Amir Khan and Sk. Golu in support of their case. In other words, these two persons are said to be the prosecution witnesses. These three persons who were involved in the scuffle were brought to the police station. After sometime, Sk. Irfan made a complaint of chest pain. He was taken to the Rural Hospital, Darwha, where he was declared dead. The police department has conducted enquiry in which it was allegedly revealed that four officials named above were responsible for the custodial death. Accordingly, PSI Parmar lodged FIR.

6. The learned Counsel for the respective Applicants submit that out of the four accused, two accused namely, Shabbir Gulab Pappuwale and Sachin Subhashrao Jadhav have already been released on bail by this Court vide order dated 11/10/2022 in Criminal Application (BA) No. 1134/2022 (*Shabbir Gulab Pappuwale V/s State of Maharashtra*) and order dated 1/12/2022 in Criminal Application (BA) No. 1245/2022 (*Sachin Subhashrao Jadhav V/s The State of Maharashtra*) respectively.

7. It is argued that these two accused had left the police station after receiving information, as recorded in station diary entry, and that therefore, there is a reason to believe that these two accused were with police party that

brought the deceased and his friends to the police station. However, there is absolutely no evidence that the Applicants have either left the police station after receiving information of the scuffle nor is there any evidence to show their complicity with the crime. According to the Applicants, none of the witnesses have named or identified the Applicants to be the persons who have assaulted Sk. Irfan.

8. The learned APP has, however, invited attention of this Court to the statement made by one of the witnesses namely, Amir Khan, one of the associates of Sk. Irfan who was brought in the police station. He states that he along with Sk. Irfan, Sk. Golu consumed country-made liquor at village Lakh. They were coming to Darwha in Auto-rickshaw. At that time their Auto-rickshaw was stopped by the police. He states that there were four police officials, one of them was Shabbir. He then states that he know other three police officials by face. They forced Sk. Irfan, Sk. Golu and the witness to sit in the police vehicle. There occurred some quarrel between the police party and the three persons. The police party had beaten them. The police party brought them to the police station. They were handcuffed and were made to sit in the police station. The police party assaulted them. Sk. Irfan made complaint of chest pain and he was taken to Rural Hospital.

9. On the next day, further statement of Amir Khan was recorded. He has narrated the same story. He then states that he came to know the names of three police officials as Shabbir, Sanjay and Sachin and that fourth police official was already present in the police station. They beat Sk. Irfan and his two friends by fist and kick blows.

10. Another statement, that has been relied upon by the learned APP, is of Jabir Sheikh, who is brother of deceased Sk. Irfan. He states that when he came to know at about 6.30 p.m. that his brother has been taken to Police Station, he visited the Police Station at about 7.00 p.m. He peeped in and found his brother Sk. Irfan, Amir Khan and Sk. Golu sitting in the Police Station. They were in good/normal condition. Police asked him to go away. He then left the police station. Later he came to know that his brother Sk. Irfan has been admitted in Hospital. Amir Khan informed him that Sk. Irfan was assaulted by the police and accordingly the statement was made by Jabir Sheikh before the police.

11. The other statement is of Sk. Golu, the other friend of Sk. Irfan who was brought to the police station. He has also stated that four police officials have beaten them. He was not aware of their names but came to know later on that their names are/were Bawane, Sachin Jadhav, Sanjay and

Shabbir. He has also stated that he know them by face. He has also blamed these four police officials for a murderous assault.

12. I have gone through the statements of these witnesses. None of them has stated the names of the police officials. Amir Khan is the only witness who has stated name of Shabbir in his statement, who has been released on bail by this Court. So far as the other three are concerned, though Amir Khan and Sk. Golu, the associates of Sk. Irfan, have stated their names, they have categorically stated that their names were disclosed to them later on.

13. The careful reading of these statements would only indicate that four police officials have assaulted Sk. Irfan and his friend. Their names were revealed to the witnesses later on. Thus, the basic case is that four police officials beat them. The witnesses have stated that they know them by face but their names were revealed later on. In this backdrop, the contentions of the Applicants that these four police officials were not subjected to Test Identification Parade and that therefore the identity is not fixed, would be valid argument. It is so, because the record placed before this Court indicates that two police officials out of the four, who are responsible for the murderous assault, had left the police station after

receiving information. Those two have been released on bail. The third police official namely PSI Vispute, who has also left the police station has not been made accused. There is no record to show that other two i.e. present Applicants were either present in the police station at the relevant time or were seen assaulting Sk. Irfan and his friends (the witnesses). In these circumstances, the Test Identification Parade would have fixed the identity of the police official (accused persons). Nonetheless, since the witnesses have stated that they know Applicants by face, the prosecution will get an opportunity to identify the accused in the Court during trial. At this stage, however, the Applicants are entitled for the benefit of absence of Test Identification Parade.

14. The Applicant – Purushottam Bawane has been arrested on 9/3/2022 and the Applicant – Sanjay Mohature has been arrested on 10/5/2022. They are behind the bars since last about eight to nine months. The chargesheet has been filed on 6/6/2022. The charge has not yet been framed. It will take time to commence and conclude the trial. The Applicants are police officials, and therefore, there is no likelihood of their abscondance. In the circumstances though the allegations made against the Applicants are serious, considering the nature of evidence collected by the Investigating Officer and considering the fact that similarly

placed accused have been released on bail, the Applicants are entitled to be released on bail.

15. The observations made in this order are *prima facie* in nature and are made for deciding the present Application only. The learned trial Judge, who is seisin of the trial, shall not get influenced with the above observations.

16. Resultantly, following order is passed.

ORDER

- (i) Criminal Bail Applications are allowed.
- (ii) The Applicants – Purushottam Devraoji Bawane and Sanjay Motiram Mohature be released on bail in Crime No. 818/2021 registered with Police Station, Darwha, District Yavatmal for the offences punishable under Section 302, 323 read with Section 34 of Indian Penal Code, on their executing PR Bond in the sum of Rs. 25,000/- with one solvent surety each in the like amount.
- (iii) The Applicants shall, at the time of execution of bond, furnish their addresses and telephone/mobile number(s) to the Investigating Officer and the Court

concerned, and shall not change the residence till the final disposal of the case.

- (iv) The Applicants shall regularly attend the court and co-operate the learned trial court to complete the trial for the above offences. The Applicants shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial court.
- (v) The Applicants shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (vi) The Applicants shall maintain law and order.
- (vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

17. Criminal Bail Applications are disposed of accordingly.

18. Since the Bail Application No.1419/2022 is disposed of, pending Criminal Application (APPP) No.

1969/2022 does not survive. The same stands disposed of accordingly.

(ANIL L. PANSARE, J.)

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