



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

CRIMINAL APPLICATION (BA) NO. 1061 OF 2023

Shakirabi Kalim Khan and another

Vs.

The State of Maharashtra, Through Police Station Officer, Hiwarkhed, Buldhana

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 applicants.
Mr. S. S. Hulke, APP for respondent No.1/State.
Mr. Sumit Joshi, Advocate (Assist to prosecution).

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 22/12/2023

1. By this application, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.114/2023 registered with Police Station Hiwarkhed, District Buldhana for the offence punishable under Sections 143, 147, 148, 302, 326 and 120-B read with Section 149 of the Indian Penal Code. The applicants are arrested on 01.07.2023 and since then they are behind bars.

2. The accusation against the present applicants is that Javed Khan Aliyar Khan residence of Chichpur had lodged report on 01.07.2023 on an allegation that accused Nos.1 to 7 have purchased agricultural land in Gut No.378 which is adjacent land and his father is the owner of Gut No.279 and 280 admeasuring five and half Acres. His father had given some land to the accused No.1 for cultivation on contract basis and, therefore, he

has taken possession of the said land, therefore, the informant and his father told him that they can do the agricultural operations separately. However, there was a quarrel between them prior to eight days. On 30.06.2023 with the intervention of one Lalbhai, a meeting was taken place between the informant and accused No.1. Accused No.1 was told to settle the matter. However, on 01.07.2023 present applicants along with the other co-accused came in a vehicle in the agricultural field Gut No.279 and 280 by holding sticks, knife and chilli powder and assaulted Shaikh Kasam Shaikh Janmohammad and Mohammad Kha Turab Kha. Both have sustained the injuries. In the said incident, Mohammad Kha and Shaikh Kasam succumbed to the death due to the injuries sustained by them in the said incident.

3. Learned Counsel Mr. Mir Nagman Ali for the applicants submitted that as far as both the applicants are concerned, only role attributed to them is throwing the chilli power on their person. They have not participated in any assault. Now, investigation is completed and charge-sheet is filed. Though two persons died in the alleged incident but the role of the present applicants is only to the extent of throwing the chilli power. The said chilli power was not noticed during the postmortem examination. The spot panchnama though shows the recovery of the packet of the chilli power but Medical Officer has not seen any chilli power on the

person of the dead bodies. Considering the investigation is completed and the role of the present applicants to the extent of throwing the chilli power, they be released on bail. He further submitted that now applicant No.1 is admitted in the hospital and her condition is deteriorated. In view of that, prays for releasing the present applicants on bail.

4. Learned APP strongly opposed the application on the ground that all the accused along with present applicants, in furtherance of their common object, came at the spot holding weapons in their hands and caused the injuries to the persons in which two persons have lost their lives. As far as the present applicants are concerned, played a vital role that they thrown the chilli power on the person and, thereafter, the alleged incident has taken place. He submitted that if the applicants are released on bail, they will tamper with the prosecution evidence and prays for rejection of the application.

5. Learned Counsel Mr. Joshi for the informant also endorsed the same contention and submitted that in furtherance of the common object, present applicants and other co-accused arrived at the spot holding weapons in their hands. The intention of the present applicants can be ascertained from this fact and if they released on bail, they will tamper the prosecution evidence.

6. Having heard the learned Counsel for the applicants, learned APP for the State and learned Counsel for the informant. Perused the investigation papers. In

the said scuffle two persons namely, Mohammad Kha Turab Kha and Shaikh Kasam have lost their lives. The statements of various witnesses are recorded from which it revealed that present applicants have thrown chilli power on the persons of the injured and the deceased during the incident. Now, investigation is completed charge-sheet is filed. Admittedly, the Medical Officer has not noticed any chilli power on the persons of the deceased but the spot panchnama shows that the packet of the chilli powder was received from the spot of incident. On perusal of the entire statements and the role attributed to the present applicants is only to the extent of throwing the chilli powder. There is no allegations that they either assaulted any of the witness or the deceased by means of any weapons. Now, considering the investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required. Moreover, both applicants are the ladies and behind bars since date of their arrest. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant No.(1) **Shakirabi Kalim Khan** and No.(2) **Saminabi Rashid Khan** be released on bail in connection with Crime No.114/2023 registered with Police Station Hiwarkhed, District Buldhana, for the

offence punishable under Sections 302, 326, 143, 147, 148, 120-B read with Section 149 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, on executing PR bond in the sum of Rs. 25,000/- each with one solvent surety in the like amount.

(iii) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

(iv) The applicants shall not enter into the vicinity of Chichpur Shivar specially in Gat No.279 and 280, till the culmination of the trial.

(URMILA JOSHI-PHALKE, J.)