



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

CRIMINAL APPLICATION (BA) NO. 332 OF 2024

Vitthal s/o Tatyarav Wagh and another V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. V.R. Deshpande, counsel for the applicants.

Mr. Nitin Autkar, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 12/04/2024.

1. The applicants came to be arrested on 16/10/2023, in connection with Crime No. 302/2023 registered with Police Station Jaulka, Tq. Malegaon, District Washim for the offence punishable under Sections 302, 143, 147, 148, 504 read with Section 149 of the Indian Penal Code, 1860.

2. The accusation against the present applicants is on the basis of the report lodged by one Shivaji Uttam Sapate alleging that he is the owner of the Gut No. 314 admeasuring 14 Acres 23 R, and the dispute is pending in between the present applicants, other co-accused and his family members, on account of said land. On 11/10/2023, at 8.30 p.m. his younger brother Gajanan Sapate brought the entire Soyabean and kept it near the Hanuman Temple premises. His brother had been to Hanuman Temple to verify the articles i.e. the Gunny Bags of the said Soyabean. The informant also followed him, at that time, he witnessed that the present applicants along with the other co-accused came at the spot in one

vehicle and were assaulting his brother Gajanan. He specifically alleged that present applicants were holding the hands of the deceased Gajanan and other co-accused were assaulting him. On the basis of the said report, the police have registered the crime. In the said incident, the death of the deceased Gajanan was caused. It is alleged that all the accused along with the present applicants in furtherance of their common intention assaulted the deceased and caused his death.

3. It is submitted by learned counsel for the applicants that as far as the present applicants are concerned, the role attributed to them is that they hold the hands of the deceased, and other co-accused have assaulted him. Some of the accused are already released on bail by this Court. It is submitted that, now the investigation is completed and charge-sheet is filed, considering the role of the present applicants wherein it is not alleged that they have either assaulted the deceased by any weapon. The deceased has sustained injuries in the nature of lacerations which are four in number. Due to the assault on the head, the death is caused due to the head injury. The query report i.e. medical opinion given by the medical officer shows that injuries sustained by the deceased is due to the iron road which is not assigned to the present applicants. Now, the investigation is completed and charge-sheet is filed, and prays for releasing the applicants on bail.

4. Learned APP strongly opposed the said application on the ground that in furtherance of the common object, the

applicants and the other co-accused assaulted the deceased, due to the previous dispute between them. Thus, all the accused are responsible for the death of the deceased. Considering the prima-facie case, the bail application deserves to be rejected.

5. Having heard learned counsel for the applicants and learned APP for the State, perused the investigation papers. From the recitals of the FIR, it reveals that the role attributed to the present applicants is that they hold the hands of the deceased and other co-accused were assaulting them. The medical report shows that the injury sustained by the deceased is due to the iron rod and death is caused due to the head injury which is attributed to the other co-accused. As far as the present applicants are concerned, the death is not caused due to any act committed by the present applicants. Admittedly, the common object is attributed to the present applicants however, considering now the investigation is completed and no role of assault is attributed to the present applicants, their further incarceration is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] In connection with Crime No. 302/2023 registered with Police Station Jaulka, Tq. Malegaon, District Washim for the offence punishable under Sections 302, 143, 147, 148, 504 read with Section 149 of the Indian Penal Code, 1860, the applicants – (1)

Vitthal s/o Tatyarav Wagh (2) Gajanan s/o Tatyarav Wagh, are released on bail on executing of P.R. bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

- c] The applicants shall not enter into Gut No. 314 situated at Karli Shivar and also in the vicinity of Eranda, Tah. Malegaon, District Washim, till the culmination of the trial.
- d] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application **disposed of**.

[URMILA JOSHI-PHALKE, J.]