



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

CRIMINAL APPLICATION (BA) NO.352 OF 2024
(Saurav @ Shera Babanrao Marbade Vs. 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. A.M. Jaltare, Advocate for the applicant.
Ms S. Haider, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MAY 7, 2024.

By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.154/2023 registered at police station Mangrul Dastagir, District Amravati for the offence punishable under Sections 143, 144, 147, 148, 120-B, 302 read with Section 149 of the Indian Penal Code and Sections 4 and 25 of the Indian Arms Act, 1959 and Sections 135 of the Bombay Police Act, 1951.

2. The accusation against the present applicant is on the basis of report lodged by Atul Chandrakant Sawale on an allegation that on 15/03/2023 at around 1:00 p.m. he along with the deceased was present near Buddha Vihar when co-accused Rishikesh Mhaske, Sahil Kawale, Tushar Dhande, Swaraj Kale came on the motorcycle and left the place after noticing the deceased. After 20 – 25 minutes later said Rishikesh Maske, Sahil Kawale and other co-accused and the present applicant came along with the weapons in their hands and assaulted

the deceased. Due to fear the complainant fled away from the spot. The death of the deceased is caused due to the said assault. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the recitals of the FIR is concerned name of one Saurav is mentioned and not the present applicant whose name is Saurabh. No specific act is attributed the present applicant. He submitted that general allegations are made against the present applicant. He also invited my attention towards the dying declaration and submitted that even though the name of the present applicant is mentioned in the dying declaration but no specific act is attributed, no overt act is there, general allegations are made. In view of that, the applicant be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that though in the FIR the name of the present applicant is not mentioned but she submitted that the nick name of the present applicant namely Shera is mentioned in the FIR as well as the subsequent statement of the informant. She further invited my attention towards the dying declaration wherein it is specifically mentioned that present applicant was also involved in the assault. The postmortem report shows that the deceased had sustained several injuries which resulted into his death. The death of the deceased is due to the 'head injury with polytrauma'. She submitted that when the group of the person was assaulting one

person it is difficult for the witnesses also to describe the role of each of the accused. Considering the fact that applicant has assaulted the deceased after forming the unlawful assembly with the co-accused, the *prima facie* case is made out and the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers. From the recitals of the FIR it shows that there was a previous dispute between the deceased and one Dunk @ Ritik Shriwas. As per the recitals of the FIR when deceased and the informant were sitting at Buddha Vihar at that time the co-accused Rishikesh Maske, Sahil Kawale came there and noticed that the deceased was sitting along with the informant, left the place. After 20 to 25 minutes all accused came there along with the weapons in their hand and assaulted the deceased. Thus, from the recitals of the FIR shows that present applicant along with the other co-accused came by preparing themselves to assault the deceased and they came with the weapons in their hand. The deceased was assaulted by all the accused. The subsequent statement of the informant also shows the role of the present applicant in assaulting the deceased. Prior to the death of the deceased the statement was recorded wherein also he has named the present applicant. As far as the contention of the learned Counsel for the applicant is concerned that the general allegations is made and no specific act is attributed, the fact needs to be considered

that one person was assaulted by the group of the persons, it is difficult for the eyewitnesses also to ascertain the act of each of the accused. Considering in furtherance of common object, the deceased was assaulted and the manner in which he was assaulted and the injuries sustained by the deceased which resulted into the death of the deceased, *prima facie* case is made out. In view of that, the application deserves to be rejected.

6. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*