



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

CRIMINAL APPLICATION (BA) NO.449 OF 2024
(Rashid Khan Sattar Khan Maniyar and anr. 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. S.A. Chaudhari, Advocate for the applicant.
Mr. D.V. Chauhan, Public Prosecutor for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 24, 2024.

By this application, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure in connection with the 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 and Section 135 of the Maharashtra Police Act.

2. The applicants are the accused Nos.4 and 5 arrested on 01/07/2023 and 06/07/2023 respectively. The accusation against the present applicants is on the basis of the report dated 01/07/2023 lodged by Javed Khan Aliyar Khan resident of Chichpur alleging that present applicants along with the other co-accused have purchased the agricultural land in Gat No.378 which is adjacent to his field and the father of the informant is the owner of Gat Nos.279 and 280 ad-measuring 5 acres. The father of the informant has given said land to the accused No.1 for cultivation on yearly basis. The accused No.1 was

trying to take possession of the said land, and therefore, the father of the informant has taken the possession and started cultivating personally, due to which, 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 them and accused No.1 agreed to settle their matter by obtaining some money, but the father of the informant was not ready for paying any amount. On 01/07/2023, present applicants along with the other co-accused by forming the unlawful assembly came in the agricultural field armed with sticks, knife and chilli powder and started beating Shaikh Kasam Shaikh Janmohammad and Mohammad Kha Turab Kha. Due to the assault by all the accused, both Shaikh Kasam Shaikh Janmohammad and Mohammad Kha Turab Kha succumbed to the death. On the basis of the report lodged by the informant the crime was registered against the present applicants.

3. Learned Counsel for the applicants submitted that the role attributed to the present applicants is assault by stick. In fact, merely because they are family members of the co-accused they are implicated. He invited my attention towards the recitals of the FIR as well as various statements of the witnesses and submitted that there was no intention of the present applicants to eliminate the deceased. In fact, they are implicated falsely in the alleged offence. No overt act is attributed to them. Now investigation is completed and charge-sheet is filed,

further incarceration of the present applicants is not required. In view of that, the applicants be released on bail.

4. Learned Public Prosecutor strongly opposed the application on the ground that due to the previous dispute present applicants and the other co-accused formed the unlawful assembly and entered into the field which was in possession of the deceased. They are holding weapons in their hand and in furtherance of their common object they have assaulted the deceased. In the said incident, two persons have lost their life. Considering the gravity of the offence, the application deserves to be rejected.

5. I have perused the investigation papers and heard the submissions of both the sides. From the recitals of the FIR, it reveals that all the accused along with the present applicants came at the spot holding weapons in their hand i.e. sticks, knife and chilly powder. As far as the FIR is concerned, the presence of the present applicants is not only shown but the role attributed to them that they have assaulted the deceased by means of stick. During investigation, the investigating officer recorded the various statements of the eyewitnesses namely Javed Khan Aliyar Khan, Shakilabi Aliyar Khan and others, which shows the involvement of the present applicants in the nature of instigation as well as assault. On perusal of the postmortem report which shows that Mohd. Khan

Turabkha died in the incident sustained as many as 11 injuries in the alleged incident. The other injured who subsequently succumbed to the death Shaikh Kasam Shaikh Janmohammad has also sustained five injuries. The internal injuries sustained by both the deceased shows in what manner they were assaulted by all the accused. The probable cause of death is haemorrhagic shock due to stab injuries as far as the death of deceased namely Mohd. Khan is concerned. The other injured Shaikh Kasam Janmohammad has also died due to the head injuries associated with the other injuries. Considering the statements of the witnesses, the manner in which both the deceased were assaulted and the role attributed to the present applicants who were the aggressors entered in the field by forming the unlawful assembly and in pursuance of the said assembly they have eliminated both 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*