



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

CRIMINAL APPLICATION (APPP) NO. 1594 OF 2024 IN
CRIMINAL APPLICATION (BA) NO. 731 OF 2024

Sheikh Gayas Sheikh Munir Bagwan and another 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.V. Sirpurkar, counsel for applicants.

Mr. K.R. Lule, APP for non-applicant/State.

Mr. A. J. Thakkar, counsel for Assist the Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/09/2024.

1. This is an application for assist to prosecution filed by the complainant for seeking permission to engage counsel to assist the prosecution.
2. In view of the reasons mentioned in the application, permission is granted to engage the counsel to assist the prosecution.
3. The criminal application is disposed of.

CRIMINAL APPLICATION (BA) NO. 731 OF 2024

1. The applicants came to be arrested on 09/01/2024 in connection with Crime No. 11/2024 registered with Police Station Deulgaon Raja, Tq. and District Buldana for the offence punishable under Sections 143, 144, 147, 148, 302, 324, 323, 504, 506, read with Section 149 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Mohd. Tausif Sheikh Harun on an allegation that on 09/01/2023 at about 2.30 p.m., a quarrel took place between the accused Sheikh Abrar and brother of the complainant, Mohammad Asif Sheikh Hussain, and Sheikh Akib, i.e. the deceased, near Deulgaon Raja, Chikhali Road, on account of providing the space to a lady for selling vegetables. After sometimes, the co-accused Sheikh Abrar called his brothers i.e., present applicants, and co-accused Sheikh Basid and Sheikh Juber, who came there with wooden sticks in their hands and assaulted the complainant and complainant's brother as well as the deceased. During the said scuffle, the co-accused Sheikh Juber inflicted a blow of knife on the head of Sheikh Akib's head, and due to the said blow, he succumbed to death. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard Mr. S.V. Sirpurkar, learned counsel for the applicants who submitted that as far as the presence of the applicants is concerned, there is no dispute as the cross-complaints are filed. During this scuffle, both the party members have sustained injuries. He submitted that, even considering the recitals of the FIR and the statements of various witnesses, wherein it is alleged that present applicants have assaulted the informant as well as the deceased and other prosecution witnesses by means of a stick. As far as the death of the deceased is concerned, which is caused due to blow given by Sheikh Juber, thus, the applicants have not caused the death of the deceased. Now, investigation is completed and

charge-sheet is filed, further incarceration of the present applicants is not required. In view of that, they be released on bail.

4. Learned APP and learned counsel for the complainant strongly opposed the said application on the ground that the applicants who formed the unlawful assembly, and in furtherance of their common object, assaulted the deceased as well as other prosecution witnesses, and caused the death of the deceased. Considering it was the act committed by all the applicants, the bail application deserves to be rejected.

5. Having heard learned counsel for the applicants and learned APP for the State as well as learned counsel for the complainant, perused the recitals of FIR and various statements of the witness as well as the post mortem report. There is no dispute as to the fact that the death of the deceased is caused due to the head injury. The said head injury, as per the eye witnesses is attributable to the Sheikh Juber, as far as the present applicants are concerned, it is alleged that they have assaulted the deceased as well as other prosecution witnesses by means of a stick. Now, the investigation is already completed and charge-sheet is already filed, considering the fact that death is not caused due to blow given by the present applicants. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required. However, considering there is apprehension of tampering of the witnesses and repetition of the similar

incident, if the applicants are released on bail, some stringent conditions require to be imposed. In view of that, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] The applicants (1) Shaikh Gayas Sheikh Munir Bagwan (2) Sheikh Riyaz Bagwan @ Babalya Sk. Munir shall be released on bail, in connection with Crime No. 11/2024 registered with Police Station Deulgaon Raja, Tq. and District Buldana for the offence punishable under Sections 143, 144, 147, 148, 302, 324, 323, 504, 506, read with Section 149 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 25,000/- each with one solvent surety in the like amount.
- c] The applicants shall not enter into the village Deulgaon Raja, District Buldhana, till culmination of the trial.
- d] The applicants shall attend the proceedings before the Sessions Court without seeking exemption unless there are exceptional circumstances.
- e] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]