



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

CRIMINAL APPLICATION (BA) NO.993 OF 2024

(Bhushan Shrikrushna Thakre and anr. Vs. The 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

Ms Paunikar, Advocate h/f Mr. S.V. Sirpurkar, Advocate for the
applicant.

Ms H.N. Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- DECEMBER 2, 2024.

The applicants came to be arrested on 20.03.2024 in connection with Crime No.157/2024 registered with Police Station Borgaon Manju, District Akola for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Sachin Pandhari Ghawat on an allegation that his elder brother namely Sudhakar Ghawat was engaged in excavation and transportation of sand. The informant assisted his brother in the said business. His brother informed him that prior two days one Rohit Khedkar had threatened him to stop excavation of sand from Katepurna River otherwise he has to face the dire consequences. On 19.03.2024 his brother received a phone call from Rohit Khedkar, therefore, the complainant and his brother started for the said place in separate vehicles. His brother went in the transport vehicle ahead whereas the

complainant was proceeding on his own vehicle. When he reached he received the phone call informing that the accused Rohit Khedkar and the present applicants had altercation amongst themselves. Therefore, the complainant reached the spot and saw that the applicants had caught hold of his brother's hands and co-accused Rohit Khedkar assaulted him by means of a knife. Due to the assault on the vital part of the body deceased succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the present applicants are concerned only allegation is that they both have hold the hands of the deceased and thereafter the co-accused has executed the act of piercing the knife in his body. Thus, there was no common intention. As far as present applicants are concerned they were not aware that the other co-accused was holding knife with him. In a sudden fight, sudden quarrel the alleged incident has taken place. As far as the role of the present applicants are concerned which is not in the actual assault. As far as the common intention is concerned there is no material to show that the applicants have shared the common intention with the other co-accused. In support of the contention, she placed reliance on ***Balu @ Bala Subramaniam and anr. Vs. State (UT of Pondicherry) [(2016) 15 SCC 471]*** wherein it is held by the Hon'ble Apex Court to invoke Section 34 IPC,

it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:- (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention.

4. She further placed reliance on ***Raju Trambak Magare and ors. Vs. State of Maharashtra [(2001) 10 SCC 385]*** wherein the similar observation is made by the Hon'ble Apex Court as far as the common intention is concerned and it is held that the accused are not involved in actual assault and the incident took place due to the sudden fight and accused were acquitted.

5. She submitted that considering the consistent observation of the Hon'ble Apex Court in the present case also there is no material to show that the present applicants were sharing the common intention with the other co-accused even they were not aware whether the other co-accused was holding knife along with him. Now, investigation is completed and charge-sheet is filed, further incarceration of the applicants is not required. In view of that, they be released on bail.

6. Learned APP strongly opposed the application and submitted that if the present applicants would not have held the hands of the deceased, the other co-accused

was not in position to execute his act. Thus, the common intention can be gathered from the circumstances. There was continuous communication between the present applicants and the other co-accused. Hence, learned APP prays for rejection of the application.

7. I have heard learned Counsel for both the parties. Perused the investigation papers as well as recitals of the FIR it reveals that there was a previous enmity between the deceased and the co-accused Rohit Khedkar on account of excavation of the sand. As far as the present applicants are concerned there is nothing on record to shows that the present applicants were also having any enmity between the deceased. From the recitals of the FIR and from the statements of the witnesses it reveals that during the altercation of the words present applicants hold the hands of the deceased and other co-accused has given a blow of the knife on the vital part of the body. As observed in various judgments of Hon'ble Apex Court common intention can be gathered from the circumstances. The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Admittedly, at this stage, whether they were sharing a common intention or not cannot be gathered. It is based on the evidence which is to be recorded. At this stage, considering the investigation is already completed and considering the fact that the applicants have not participated in actual assault, they

have made out a case for grant of bail. Hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The application is allowed.
- (ii) The applicants – 1) Bhushan Shrikrushna Thakre and 2) Vaibhav @ Chhakula Babuji Athavale in connection with Crime No.157/2024 registered with Police Station Borgaon Manju, District Akola for the offence punishable under Sections 302 read with Section 34 of the Indian Penal Code, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.
- (iii) The applicants shall not enter into the vicinity of Ghusarwadi, District Akola till the culmination of the trial.
- (iv) The applicants shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case either personally or by way of electronic media.
- (v) The applicants shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(vi) The applicants shall not leave the jurisdiction of Akola district without prior permission of the District Court, Akola.

8. The contravention of any of the condition imposed by this Court would lead to cancellation of bail.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*