



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

CRIMINAL APPLICATION (BA) NO.1184 OF 2023

Bashir Khan Sattar Khan and one

Vs.

The State of Maharashtra, Through Police Station Officer, Hiwarkhed, Buldhana

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Mir Nagman Ali, Advocate for applicants.

Mr. N.R. Rode, APP for non-applicant-State.

Mr. A. Siddique, Advocate (Assist to prosecution).

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 05/02/2024.

1. 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 under Section 135 of the Maharashtra Police Act. The applicant no.2 is arrested on 2.7.2023 and applicant no.1 is arrested on 6.7.2023.

2. The accusation against the present applicants is on the basis of the report lodged by Javed Khan Aliyar Khan residence of Chichpur on 01.07.2023 alleging that accused Nos.1 to 7 have purchased agricultural land in Gut No.378 which is adjacent to his field and the father

of the informant is the owner of Gut Nos.279 and 280 ad-measuring five areas, as his father 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. It is alleged that on 30.06.2023 with the intervention of one Lalbhai, a meeting was taken place between the informant and accused No.1 and accused No.1 agreed to settle their matter by obtaining some money, but the father of the informant was not ready for the same. 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, the death of both the injured was caused. Against the present applicants, it is alleged that they were instigating the other co-accused to assault them and due to the instigation, all other accused have assaulted and both have succumbed to the injuries. On the basis of the said report, police have registered the crime against the present applicants.

3. Learned Counsel Mr. Mir Nagman Ali for the applicants submitted that as far as present applicants are concerned, no specific allegations are made against them

in the first information report. The statements of the eyewitnesses shows the vague statement that they have been instigated the other co-accused to kill the deceased. Now investigation is completed and charge-sheet is filed. Considering the role attributed to the present applicants, no overt-act is attributed. Now investigation is completed and charge-sheet is filed. In view of that, applicants be released on bail.

4. Learned APP strongly opposed the application on the ground that there was a previous dispute on account of the agricultural land and in the said incident present applicants along with the other co-accused came at the spot in furtherance of their common object to eliminate the deceased and assaulted them. The present applicants have instigated the other co-accused and other co-accused have assaulted the deceased. In the alleged incident, two persons succumbed to the death. Considering the *prima facie* material against the present applicants and the gravity of the offence that two persons have lost their life in the alleged incident, the application deserves to be rejected.

5. Heard learned counsel for the original complainant also. He endorsed the same contentions.

6. Perused the investigation papers and heard the submissions of both the sides. From the recitals of

the first information report, it reveals that all the accused along with the present applicants came at the spot with weapons i.e. sticks, knife and chilly powder. As far as the first information report is concerned, the presence of the present applicants is shown. During investigation, the investigating officer recorded the statements of the eyewitnesses namely Javed Khan Aliyar Khan, Shakilabi Aliyar Khan, Jabbar Khan Turab Khan and others, which shows the involvement of the present applicants in the nature of instigation at their hands. Also perused 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 hemorrhagic 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 and the manner in which deceased were assaulted and the role attributed to the present applicants is that they have instigated the other co-accused and other co-accused have eliminated the deceased. The alleged act committed by the present applicants and other co-accused in

furtherance of their common object. It is well settled that while considering the bail application, the court has to consider the gravity of the offence, the involvement of the applicants in the alleged offence, the apprehension of tampering of the witnesses and the apprehension of fleeing away of the applicants. Considering the entire circumstances which shows that the applicants along with the other co-accused in furtherance of their common object assaulted the deceased wherein two persons have lost their life. Considering the gravity of the offence, the application deserves to be rejected. Accordingly, I proceed to pass the following order :

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)