



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

CRIMINAL APPLICATION (BA) NO.749 OF 2024
(Bhaurao s/o Ashruji Gaikwad 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. V.R. Thote, Advocate for the applicant.
Ms S. Dhote, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- AUGUST 30, 2024.

The applicant came to be arrested on 08/11/2023 in connection with Crime No.688/2023 registered with Police Station Umarkhed, District Yavatmal for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of the report lodged by the Rahul Anil Shinde on an allegation that on 07/11/2023 there was a meal on account of religious function at his house. At the relevant time, the co-accused Dharma Gaikwad came at the said spot and asked them to keep the silence as their chitchatting disturbing him. On that account there was a quarrel between them and it is alleged that said Dharma Gaikwad and other co-accused Karan Gaikwad have assaulted the deceased. It is specifically alleged that Karan Gaikwad has brought the weapon Khanjar and gave a blow of that Khanjar on the person of the deceased as well as the other

co-accused i.e. Dharma Gaikwad and Dhiraj Gaikwad holding iron rod in their hand. They have also assaulted the deceased. As far as the present applicant is concerned, in the FIR it was only alleged that he was present at the spot at the time of the incident. On the basis of said report, police have registered the crime against the present applicant and the other co-accused. On the same day, the supplementary statement of the informant was recorded wherein he has alleged that the present applicant has instigated the other co-accused to assault the deceased, and therefore, the co-accused brought the knife and gave a blow by a knife on the person of the deceased. Said incident is also witnessed by the eye-witnesses namely Shashikala Shinde, Chhaya Shinde and others who have specifically made allegations against the present applicant that he has instigated the other co-accused and the co-accused have given a blow on the person of the deceased. 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 role of the present applicant is concerned which is only to the extent of his presence. At the first instance, the informant has not stated about the instigation at the hands of the present applicant. Said statement was after thought. Only to implicate the present applicant who is also a family member of the co-accused. Now, the investigation is completed and charge-sheet is

filed, as far as the role of the present applicant is concerned which is not in the exact assault. Considering the same, he be released on bail.

4. Learned APP strongly opposed the application and submitted that on the instigation of the present applicant the other co-accused have assaulted the deceased and the deceased was eliminated. Though investigation is completed, there is every possibility of tampering of the witnesses if applicant is released on bail. She submitted that the entire act was executed in furtherance of common intention, and therefore, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the only role attributed as far as the recitals of the FIR are concerned that he was present at the spot of incident. Subsequently, it was alleged that he has instigated the co-accused to bring him knife and gave a blow on the person of the deceased. Considering the role attributed to the present applicant and now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.

(ii) The applicant - Bhaurao s/o Ashruji Gaikwad in connection with Crime No.688/2023 registered with Police Station Umarkhed, District Yavatmal for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, be released on bail on executing PR bond of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of village Umarkhed, Taluka Umarkhed, District Yavatmal till the culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses in any manner who are acquainted with the facts of the case.

(v) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)