



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

CRIMINAL APPLICATION (BA) NO.234/2025

Rajendra @ Banti s/o Shankar Dawne

..VS..

**The State of Maharashtra, through PSO PS Ramnagar, Gondia,
District Gondia**

WITH

CRIMINAL APPLICATION (BA) NO.235/2025

Hero s/o Shankar Dawne

..VS..

**The State of Maharashtra, through PSO PS Ramnagar, Gondia,
District Gondia**

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

Court's or Judge's Order

.....
Shri Aakash Gupta, Counsel for Applicants.
Shri N.B.Jawade, Additional Public Prosecutor for the State.
Shri R.K.Tiwari, Counsel for the Objector.

CORAM : **URMILA JOSHI-PHALKE, J.**

CLOSED ON : **17/04/2025**

PRONOUNCED ON : **24/04/2025**

1. By these applications under Section 483 (439 of the CrPC) of the Bhartiya Nagarik Suraksha Sanhita, 2023, applicants are seeking regular bail in connection with Crime No.120/2024 registered with the non-application/police station for offences punishable under Sections 143, 144, 147, 148, 302,

and 120-B read with 149 of the IPC and under Sections 3/25, 5/25, and 27 of the Indian Arms Act and under Sections 37(1) (3) and 135 of the Bombay Police Act, 1951.

2. The applicants came to be arrested on 23.4.2024 and since then they are in jail.

3. Initially, crime was registered on the basis of report lodged by Rahul Tiwari, who is brother of Rohit Tiwari (the deceased), on an allegation that in the year 2012, murder of brother of applicants was committed and on that count, quarrel took place between the deceased and applicant Banti. The said dispute was resolved. On 22.4.2024, at about 8:00 pm, his brother proceeded on motorcycle towards Kudwa Naka. At the relevant time, the informant was standing in front of Sahayog Hospital. At about 9:15 pm, one Ajay Patle and Anmol Sawarkar informed him that his brother was shot dead as applicant Banti fired a bullet on him and he is lying in front of Shalimar Hotel. He immediately rushed to the Shalimar

Hotel where Abhishek Warade, Aayan Shende, Karan Chourasiya were present who took the deceased in the Sahayog Hospital and, therefore, he immediately rushed to the Sahayog Hospital whereat his brother was under treatment. On enquiry with Ajay, he disclosed that when he and Anmol were standing in front of the District Bank, he saw the deceased coming from the motorcycle from “Pal Square” to Kudwa Naka. He was followed by two motorcyclists. On one motorcycle, both applicants were proceeding and applicant Hero Dawne was riding the motorcycle and applicant Banti was pillion rider. On another motorcycle, co-accused Mohit, along with his associates, came behind the deceased. At the relevant time, applicant Banti fired a bullet which hit back of the deceased and the accused left the place.

4. On the basis of the said report, the police registered the crime against the present applicants and other co-accused.

5. Learned Counsel Shri Aakash Gupta for the applicants, submitted that the statements of the eyewitnesses are contrary to the medical history. Immediately, the deceased taken to the hospital wherein history of accident was narrated. The statements of the witnesses also show that it was co-accused Mohit Marathe who had committed the murder of the deceased. The incriminating weapons are also recovered at the instance of co-accused Mohit Marathe. The implication of the present applicants is due to the previous enmity between the deceased and the present applicants. Considering the inconsistent material collected during the investigation, no *prima facie* case is made out against the applicants. He invited my attention towards various statements of the witnesses which show that the present applicants were not at all involved in the alleged incident and they were never having the weapons of pistol in their possession. Now, investigation is completed and chargesheet is filed against the applicants and other co-accused. The victim had

suffered bullet injury was accidentally discovered by the doctor when CT-Scan of the chest revealed presence of foreign metallic body in the patient. The said discovery was made almost after one hour after admission in hospital and just before the death of the victim. As per the prosecution story, the deceased, after being fired, had continued moving on two-wheeler and then fell down in front of Shalimar Hotel where people naturally assumed that it was the case of road accident. The said history was consistently given in the hospital. Perusal of the statements of all doctors and staff in the hospital would point out towards the fact that all relatives and other persons were under impression that the deceased had suffered road accident injury. The investigation also reveals the presence of the applicants at some other places away from the spot of the incident. The other material collected by the prosecution also shows false implication of the applicants. In view of that, the applications deserve to be allowed. He further submitted that informant Rahul is one of prime accused in the murder

trial of Dharam Dawne, the brother of the applicants and both are prime witnesses and as such, it is also one of reasons to implicate the applicants falsely in the alleged incident. In view of that also, the applicants be released on bail.

6. *Per contra*, learned Additional Public Prosecutor for the State and learned counsel for the objector submitted that during investigation, it revealed that the applicants are participants of the conspiracy to commit murder of the deceased. As a part of conspiracy, the deceased was consistently under watch. Applicant Banti has shared the location of the spot of the incident with the other co-accused. At the instance of the co-accused, the mobile phones were seized and the fire arm has been discovered and recovered. The statements of the eyewitnesses namely Anmol and Ajay disclose involvement of applicants along with co-accused Mohit Marathe. The specific role attributed to the applicants is sufficient to show their

involvement in the alleged crime. In view of that, the applications deserve to be rejected. They further submitted that there was apparent motive of the applicants to commit the crime.

7. Having heard learned counsel for the respective parties and gone through the investigation papers, it reveals that there was previous enmity between the informant and the present applicants as the informant is the accused in a murder trial of the brother of the applicants. As per recital of the FIR, on the day of the incident, the informant has witnessed his brother proceeding on his motorcycle towards Kudwa Naka. At about 9:15 pm, the informant was informed by Ajay and Anmol that the deceased was shot dead as bullet was fired by applicant Banti and Banti was accompanied by applicant Hero Dawne and co-accused Mohit and his associates. The statements of these eyewitnesses are recorded by the police as well as the Magistrate under Section 164 of the CrPC wherein also they

specifically stated that on 22.4.2024 they had been to Gayatri Mandir and witnessed the deceased coming on the motorcycle and followed by two motorcycles and on one motorcycle they witnessed applicant Hero Dawne riding and applicant Banti was pillion rider and on another motorcycle Mohit had followed the deceased. Applicant Banti has fired the bullet on the back of the deceased. After firing the bullet, Mohit asked them to flee away from the spot immediately and they all four fled away from the spot of the incident. As the bullet hit on the back of the deceased, the deceased dashed against one pole and fell on the ground. During investigation, the bullet as well as the pistols was recovered at the instance of co-accused Mohit Marathe. Statement of Ajay also shows that the police came along with Mohit in his shop and at the instance of Mohit, the said pistols were recovered.

8. At this stage, there is no reason to disbelieve the statements of two eyewitness who allegedly witnessed the

incident.

9. The medical and the postmortem reports disclose the bullet injury on the person of the deceased.

10. Thus, *prima facie* material shows the involvement of the applicants in the alleged incident.

11. Thus, considering the statements of two eyewitnesses, which is direct evidence against the applicants and they have immediately disclosed about the said incident to the informant, it is sufficient to show involvement of the present applicants. The CCTV footage panchanama also discloses that the investigation officer has collected the CCTV footage from the “Disha Express Daily Parcel Services”. On verification of the CCTV footage, applicant Banti was seen coming out from one shop and proceeding towards the Green Market. At about 9:13 pm, he was seen proceeding on motorcycle.

12. Thus, the CCTV footage also shows the presence of applicant Banti near the Ghat Road, Gondia along with

his brother.

13. At this stage, evaluation of the evidence is not required, but considering the statements of two eyewitnesses, it is sufficient to show the involvement of the applicants in the alleged incident.

14. The investigation papers further show that co-accused Monu Agrawal along with one Vishal Kharkate was making enquiries in the area about the deceased and was also seen in the CCTV footage doing REKHI by making rounds. The informant has filed writ petition alleging the investigating agency is exerting to press the petition to exonerate the prime accused i.e. present applicants by pressuring him to disclose that there was no involvement of the applicants in the crime.

15. The informant has also made allegations against the investigating agency as to the nature of the investigation.

16. After going through the investigating papers, at

this stage, the statements of eyewitnesses namely Anmol Sawarkar and Ajay Patle, supported by the medical evidence, show that the death of the deceased is due to bullet injury which is sufficient to show the involvement of the applicants in the alleged incident.

17. In this view of the matter, as a *prima case* case is made out against the applicants involving in the crime, applications are **rejected**.

Applications stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!