



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

CRIMINAL APPLICATION (BA) NO.754 OF 2025

(Rupesh s/o Gajanansingh Gaherwal (Thakur) 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. A.M. Jaltare, Advocate a/w Mr. N.D. Dawda, Advocate for the
applicant.

Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 01, 2025.

The applicant came to be arrested on 03.06.2024 in connection with Crime No.166/2024 registered with Police Station Washim Rural, District Washim for the offences punishable under Sections 302, 326, 324, 143, 147, 148 read with Section 149 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Uttam Subhash Bajad on an allegation that on 25.03.2024 when he was along with his other friends celebrating the Holi in the agricultural field, at that time Sunil Thakur had been to there and there was altercation between them. At that time, Jayaraj Thakur said to Sunil Thakur that he has already borrowed Rs.20,000/- from him, and he should return it. On that count, there was a scuffle between them and in that scuffle the deceased was assaulted by the co-accused Shankar Khule, present applicant and other co-accused. The deceased has sustained the head injury and the injuries on the other

parts of body. The informant has also sustained the injuries and in the said incident total four persons have sustained the injuries. During treatment the informant - Uttam Subhash Bajad who sustained the head injury has succumbed to the death. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused.

3. Learned Counsel for the applicant submitted that the death of the deceased is due to the head injury. As far as the present applicant is concerned head injury is not attributed to him. The other co-accused are already released on bail. In view of that, the applicant be released on bail. He submitted that as far as the role of the present applicant is concerned which is only to the extent of assault by fist and kick blows and the death of the deceased is caused due to the head injury, and therefore, the applicant is not responsible for the death of the deceased and hence, his further incarceration is not required.

4. *Per contra*, learned APP strongly opposed the said application and submitted that the applicant/accused was the member of unlawful assembly and in furtherance of the common object of that assembly they went in the agricultural field and assaulted the deceased and other prosecution witnesses. He further submitted that Section 149 of the IPC has its foundation on constructive liability which is the sine-qua-non for its operation. He submitted that his mere presence is also sufficient to cast the liability

on him, and therefore, the application deserves to be rejected. He also invited my attention towards the statements of the two eye-witnesses namely Jayaraj Chandel and Dnyaneshwar Gaikwad who has attributed the role of the present applicant. In view of that, as the *prima facie* case is made out, the application deserves to be rejected.

5. On hearing both the sides and on perusal of the investigation papers it reveals that the crime is registered on the basis of a report lodged by Uttam Subhash Bajad who subsequently sustained injuries and died due to the said injuries. As per the allegations, the present applicant and other co-accused were the aggressors who went in the agricultural field, assaulted the deceased as well as the other prosecution witnesses. There is a direct evidence to connect the present applicant with the alleged offence. The statement of Jayaraj Chandel and Dnyaneshwar Gaikwad discloses the role of the present applicant in the alleged offence. The deceased has sustained the head injury and total 15 injuries are found on his person. The internal injuries are in the nature of under scalp hematoma present over left frontal region. Thus, there was a linear displaced fracture present over left parietal and temporal bone of size 10 cm vertically placed. It shows the impact of the assault given by the co-accused on the head of the deceased. The role of the present applicant in assault reveals from the statement of the eye-witnesses. The deceased has

sustained in all 15 injuries along with the internal injuries on the vital part of the body i.e. head injury. The applicant was the member of unlawful assembly. Section 149 of the IPC has its foundation on constructive liability. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly can render a person liable as there was a common object though he has not actually involved in the assault. Thus, Section 149 of the IPC makes every member of an unlawful assembly at the time of committing of the offence guilty of the offence. Section 149 IPC creates a vicarious liability of the members of the unlawful assembly for the unlawful acts committed pursuant to the common object by any other member of that assembly. The basis of such constructive liability is mere membership of such assembly with the requisite common object or knowledge. Therefore, even the applicant is not involved in assaulting on the head of the deceased, but his presence and his participation in the act of assaulting the deceased as well as other prosecution witnesses sufficiently shows his involvement in the above said crime. In view of that, the application deserves to be rejected.

6. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)