



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

CRIMINAL APPLICATION (BA) NO. 839 OF 2025

Faijan Shah s/o Anwar Shah 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.S. Londhe, counsel for applicant.

Mr. C.A. Lokhande, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 12/08/2025.

1. The applicant came to be arrested on 29/03/2025 in connection with Crime No. 258/2025 registered with Police Station Khadan, District Akola for the offence punishable under Sections 135, 103, 109, 118(1), 118(2), 125, 189(2) 190, 191(2), 191(3), 352, read with Section 49 of the Bharatiya Nyaya Sanhita, 2023.

2. The crime is registered on the basis of the report lodged by Vaibhav Shitale, on an allegation that on 23/03/2025, the informant was chit-chatting with his cousin and one Dadu Warothe at about 2.30 p.m. at that time Vishal Warothe came there with his auto-rickshaw and told them that he had quarrel with Mayur Maske on account of giving dash by his auto-rickshaw and requested the informant and his associates to accompany them to have a talk with Mayur Maske, who was standing with one Prashik Jawale near his house. Accordingly, the informant and his associates

accompanied the said Vishal Warothe in his auto-rickshaw to the house of Prashik Jawale. While the informant and his associates were giving understanding to Mayur Maske, a dispute arose between them. In order to avoid further complications, the informant and his associates started leaving the spot. At the relevant time, one of the friend of Prashik Jawale, namely Sangam Sonkamble provoked the others, and the deceased was assaulted by means of knife and beaten as well as by fist and kick blows, in which death of the deceased was caused. On the basis of the said report, police have registered the crime against the present applicant, who was present at the spot of the incident.

3. Heard learned counsel for the applicant, who appeared through video conferencing, submitted that as far as the role of the present applicant is concerned, no specific role is attributed to him. Mere his presence is not sufficient to show the involvement. He submitted that considering the statements of the witnesses, except the presence there is no role is attributed to the present applicant. Now, the investigation is already completed and charge-sheet is already filed, further incarceration of the applicant is not required.

4. Learned APP strongly opposed the said application and submitted that the applicant and the other co-accused found the unlawful assembly, and in pursuance of the common object of the said assembly, the deceased was assaulted by the present applicant and

the other co-accused. As far as the role of the present applicant is concerned, which is narrated by the witness namely Sheikh Farukh Sheikh Akil, who specifically stated that it was the present applicant who has handed over the knife, which was in his possession, to the other co-accused, and the co-accused has given repeated blows on the person of the deceased.

5. He also invited my attention towards the postmortem report and submitted that, in all two injuries are found on the person of the deceased, which is on the vital part. The internal injuries are also sustained by the deceased, and the death of the deceased is due to stab injuries over the abdomen. As the act is in furtherance of the common object, the constructive liability arose against the present applicant also, and therefore, the application deserves to be rejected.

6. On hearing both sides and on perusal of the investigation papers, it reveals that the present applicant was a member of the unlawful assembly. In pursuance of the common object of the said assembly, they have assaulted the deceased and other prosecution witnesses, in which the death of the deceased is caused. The deceased has sustained incised stab wound of size 4 cm x 1 cm x cavity deep present over the right iliac fossa region of the anterior abdominal wall, 9 cm below the umbilicus and 8 cm towards right of mid-line, placed obliquely, beveling is seen at the lower margin,

and the margins are clean-cut and blood-infiltrated. The nature of the injuries shows the force used by the assailants who assaulted the deceased. The death of the deceased is due to the injury on the vital part of the body. As far as the role of the present applicant is concerned, which is already narrated by one of the eyewitness, who has specifically stated that it was the present applicant who has handed over the said knife to the other co-accused, and therefore, thereafter, the injuries were inflicted by the said knife.

7. Section 149 of the Indian Penal Code (IPC) has its foundation on constructive liability which is the *sine quo non* for its operation. Section 191(3) is the juvenile section in BNS the emphasis is on the common object and not on the common intention. Mere presence in an unlawful assembly render a person liable when there is a common object. The common object of the present applicant reveals from the statement of one of the eyewitness. Considering the nature of the injuries sustained by the deceased and role attributed to the present applicant, moreover, being a member of the unlawful assembly, he is responsible for the injury caused to the deceased and death caused. In view of that application deserves to be rejected. Accordingly, I proceed to pass the following order.

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]