



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

CRIMINAL APPLICATION (BA) NO. 1136/2025

Wasudeo Dhonduji Mohe and Ors. Vs. State of Maharashtra

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

Court's or Judge's orders

Mr. Druv Sirpurkar, Advocate h/f. Mr. S. V. Sirpurkar, Advocate for the Applicants.

Ms M. A. Barabde, A.P.P. for the Non-applicant/State.

CORAM : MRS.VRUSHALI V. JOSHI,J.

DATED : 28/11/2025.

. Heard.

2. The applicant is arrested in Crime No.123/2025 for the offences punishable under Sections 103(1), 118(2), 324(2), 127(2) read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023.

3. It is alleged that the applicants along with one Vaibhav Mohe assaulted with iron rod to the husband of the first informant. Role attributed to these applicants is that all these applicants caught hold the injured and accused Vishal Mohe has assaulted with iron rod on his leg. He was admitted in hospital and after five days he died. Initially an offence under Section 118(2) of the Bharatiya Nyaya Sanhita, 2023 was registered. After his death, an offence under Section 103 was registered.

4. The learned Counsel for the applicants has stated that the cause of death is due to septicaemia. All the injuries were on his lower limb. The role attributed to these applicants is that they caught hold the deceased. Considering the role played by these applicants, the offence under Section 103 of the Bharatiya Nyaya Sanhita, 2023 will not be attracted. Due to medical negligence he died.

The intention of these applicants was not to commit a murder of the deceased. The deceased was drunkard and he was nuisance to the society. The learned Counsel for the applicants has relied on the judgment of the Hon'ble Apex Court in the case of *Mohd. Javed Jafir Ansari Vs. State of Maharashtra* [2019 SCC OnLine Bom. 7609] in support of his argument that when the assault was not on the vital part of the body and the intention was not there to commit murder, the applicant can be released on bail. He has also relied on the judgment of the Hon'ble Apex Court in *B. N. Kavatakar and Anr. Vs. State of Karnataka* [1994 Supp (1) SCC 304], wherein it is observed in paragraph No.9 as under :

“9. The next question that comes up for our consideration is what is the nature of the offence that the appellants have committed. The Medical Officer who conducted autopsy on the dead body of the deceased has opined that the death was as a result of septicaemia secondary to injuries and peritonitis. As we have indicated above, the deceased died after five days of the occurrence in the hospital. On an overall scrutiny of the facts and circumstances of the case coupled with the opinion of the Medical Officer, we are of the view that the offence would be one punishable under Section 326 read with Section 34 IPC.”

It is argued that in case in hand the offence under Section 324 would attract, for which the applicants are in jail for more than a year. Hence, prayed to release them on bail.

5. The learned A.P.P. has opposed the application stating that the deceased died due to septicaemia. The injuries caused because of the assault and he died

immediately on 5th day of assault. The statements of witnesses and eye witnesses show that the applicants were present and their active role was there. They caught hold the deceased and, thereafter, one of them assaulted with iron rod and he got fractured to his legs and thereafter, he died. Considering the role played by these applicants, prayed to reject the application.

6. On perusal of the postmortem report it appears that the cause of death is due to septicaemia because of injuries caused to the lower limb. Eye witness Vaibhav Mohe has given a statement that all these three applicants caught hold the deceased and assault was by Vishal Mohe with iron rod. Though the applicants caught hold the deceased, the intention was not there as the assault was not on vital part.

7. Considering the judgment of the Hon'ble Apex Court cited by the learned Counsel for the applicants, if the injuries are not on the vital part it can be considered while granting bail and considering the role of these applicants, the case is made out to release the applicants on bail. Accordingly, I proceed to pass the following order :

- i] The criminal application is allowed.
- ii] The applicants namely applicant No.1 - Wasudeo Dhonduji Mohe, applicant No.2- Gajanan Dhonduje Mohe and applicant No.3 – Shaligram Dhonduji Mohe shall be released on bail in connection with Crime No.123/2025 for the offences punishable under Sections 103(1), 118(2), 324(2), 127(2) read with Section 3(5)

of the Bharatiya Nyaya Sanhita, 2023, on furnishing P.R. Bond of Rs.25,000/- each with one solvent surety each in the like amount.

iii] The applicants shall not in any way tamper with the prosecution evidence.

iv] The applicants shall not pressurize or threaten the prosecution witnesses.

v] The applicants shall attend the concerned police station on every Monday and Saturday between 1:00 p.m. to 2:00 p.m.

vi] The applicants shall co-operate the investigation officer.

The Criminal application is disposed of accordingly.

(MRS. VRUSHALI V. JOSHI, J.)