



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

CRIMINAL APPLICATION (ABA) NO. 862 OF 2024

Purushottam s/o Maroti Awari Vs State of Maharashtra

AND

CRIMINAL APPLICATION (ABA) NO. 865 OF 2024

Sarita wd/o Laxman Balki and another 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. P.R. Agrawal, counsel for applicants [ABA Nos.862 and 865/2024]

Mrs. Ritu Sharma, APP for non-applicant/State. [ABA Nos.862 and 865/2024]

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 07/02/2025.

1. By these applications, the applicants are seeking anticipatory bail in connection with Crime No. 658/2023 initially registered under Sections 323 and 326 of Indian Penal Code, 1860 (IPC), and now converted under Section 302 of IPC registered at Police Station Chandrapur City, District Chandrapur.

2. The learned counsel for the applicants submitted that initially the applicants had approached this Court for grant of anticipatory bail while preferring the Criminal Application (ABA) No. 746/2023, and this Court has considered the application, and considering the role attributed to them, released the applicants on anticipatory bail. Now, the injured succumbed to the death, and therefore, the offence is converted under Section 302 of IPC, and therefore, the applicants are having apprehensions of their arrest.

Considering the role attributed to them, they be protected by granting ad-interim anticipatory bail.

3. Learned counsel for the applicants submitted that, as far as the role attributed to the applicants in both the applications is concerned, which is only to the extent of assault by fist and slaps. As far as the death of the deceased is concerned, which is caused due to the head injury. Thus, the present applicants have not caused the death of the deceased, and therefore, the question could be whether they can be held liable for the offence punishable under Section 302 of IPC. He further submitted that as far as custodial interrogation is concerned, admittedly, the role attributed to the present applicants is to the extent of fists and slaps. Thus, nothing is to be recovered from him, and therefore, their custodial interrogation is not required.

4. Learned APP strongly opposed the said application and submitted that, in furtherance of the common intention, the deceased was assaulted by the present applicants and the other co-accused, and now, the death of the injured is caused. Thus, the offence is converted under Section 302 of IPC, considering the gravity of the offence, the application deserves to be rejected, and the investigating agency is to be permitted to take custody of the present applicants.

5. Moreover, the question which arises for determination in this case as to whether, if a case for one or the other non-bailable offence and order under Section 438 of Cr.P.C. is granted, then whether police can again arrest an

accused by adding one more section of IPC, which is not bailable. As far as such powers are concerned, it is necessary to consider the role of the present applicants in the said crime. Admittedly, the allegation against the present applicants is that they have assaulted by fist and slaps. There is also no allegation that they have assaulted the head of the deceased. Admittedly, the injury caused by the deceased was a head injury, and the cause of death ascertained by the medical officer while conducting the P.M. Report is also a head injury.

6. It is well settled that once a person has been arrested on account of allegations in the first information report, simply by adding the new section of non-bailable offence, it does not change the proviso nor does it permit the police to rearrest, and therefore, the legal position is beyond doubt that once an accused is ordered to be released on bail under any of the Sections in Chapter XXXIII of the Cr.P.C., the police had no power to arrest him by merely adding another section, which may be non-bailable. The police must seek an order from the Court for cancellation of bail granted to a person. Therefore, in such a case, generally there should be no apprehension in the mind of the accused that he may be arrested or rearrested again in the said FIR.

7. Considering the role of the present applicants in the alleged crime, which appears to be only to the extent of assault by fist and slaps and the death of the deceased is not caused, due to the fist and kick blows, but it is due to the head injury, which is attributed to the other co-accused, and the

other co-accused are already released on regular bail under Section 439 of Cr.PC. Thus, considering the role attributed to the present applicant, both the applications deserve to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal applications are **allowed**.
 - b] In the event of arrest, in connection with Crime No. 658/2023 registered with Police Station Chandrapur City, District Chandrapur for the offences punishable under Section 302 of the Indian Penal Code, 1860, the applicants in ***Criminal Application (ABA) No.865/2024 namely (1) Sarita wd/o Laxman Balki (2) Suchita w/o Gajanan Shedame and in Criminal Application (ABA) No. 862/2024 namely – Purushottam s/o Maroti Awari*** shall be released anticipatory bail, on executing PR. Bond of Rs. 25,000/- each with one solvent surety in the like amount.
 - c] The applicants shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.
 - d] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
8. Both the applications are **disposed of**.

[URMILA JOSHI-PHALKE, J.]