

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

**CRIMINAL APPLICATION (BA) NO. 395/2021**

Sk. Zuber S/o Sk. Dastagir

**-VERSUS-**

State of Maharashtra

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

Court's or Judge's Orders

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Shri Avinash Gupta, Sr. Advocate assisted by Shri R. M. Daga, Advocate  
for applicant.

Shri Anil Mardikar, Sr. Advocate assisted by Shri S. G. Joshi, Advocate  
Assist to Additional Public Prosecutor Shri N. R. Rode, for State.

**CORAM : VINAY JOSHI, J.**

**DATE : 14.06. 2021.**

Hearing was conducted through Video  
Conferencing.

2. Arrest of applicant in Crime No. 142/2020 registered with Police Station Patur, Dist. Akola for the offence punishable under Sections 302, 504, 427 read with Section 34 of the Indian Penal Code and Sections 4, 25 of the Arms Act led him to approach this Court for grant of bail.

3. Shri Avinash Gupta, Senior Counsel for the applicant led stress on the point that even if the prosecution case is accepted as it stands, still it would not comply the essential requirements to constitute the offence punishable under Section 302 of the Indian Penal Code. According to

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him, on proof of allegations at the most, the accused may be convicted under Section 304-II of the Indian Penal Code. Per contra, Shri Anil Mardikar, Senior Counsel appearing for the informant would submit that, at this stage the Court cannot venture into exercise of opining about the applicability of the penal provisions since it is a question of trial. He also attracted my attention to some abrasions sustained by the deceased besides a knife injury. In short, he would submit that the accused possessed adequate intentional and knowledge while committing the act which resulted into death of victim.

4. Cousin brother of deceased has lodged report regarding the occurrence. The incident is an outcome of filmsy quarrel between the informant and the accused on account of causing damage to the seat cover of two wheeler. It was alleged that co-accused caught hold the deceased whilst on the say of co-accused, the applicant dealt a knife blow at the right thigh of the deceased which proved to be fatal. The parties are *ad idem* on the point that it was a case of single blow at the right thigh of deceased. Though there are some abrasions at the foot of deceased, they may not be of much relevance. As per postmortem notes, cause of death is as "Haeorrhage and shock due to injury to femoral vessel". Learned counsel for the applicant strenuously argued that it is a case of single blow on non-vital part of the body, from which no one can gather intention to kill. To support the submission, he relied on the order of this Court dated

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26.10.2020 passed in Criminal Application (BA) No. 309/2020 wherein under similar circumstances, the then accused was released on bail. Needless to say that hardly there can be similar facts in two criminal cases, however incidentally in said case the vital injury was a knife blow on the thigh alike this case and the victim also died due to cut of blood vessel. While releasing applicant on bail, this Court has considered the decision of the Supreme Court and expressed that, from such fact intention to kill can hardly be gathered. Relevant observations made in para 15 can be profitably reproduced as below:-

*“However, it would be difficult to record even a prima facie finding that the applicant intended to cause injury 11. At this stage, it is difficult to proceed on the assumption that the applicant was aware of the exact location of the blood vessels and that the knife blow was struck with calculation and design to achieve the end of cutting the blood vessels. While the applicant may have intended to cause injury to the left thigh, in the normal course stab injury to the left thigh would not be sufficient to cause death. Unfortunately, the knife blow resulted in cutting of the blood vessels. In **Gokul Parashram Patil .vs. State of Maharashtra**, the Apex Court observes that even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision and the fact that the vanacava was cut must, therefore,*

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*be ascribed to a non-intentional or accidental circumstance. The Apex Court referred to the decision in **Laxman Kalu Nikalje v. The State of Maharashtra, AIR 1968 SC 1390**, in which the fatal injury was caused due to a cut to the axillary artery and veins and to the decision in **Harjinder singh v. Delhi Administration (AIR 1968 SC 867)** in which the stab blow to the left thigh cut the femoral artery and vessels. In the aforesaid cases, the Apex Court held that although the injury was found to be sufficient in the ordinary course of nature to cause death, the same could not be said to have been intended, and the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow.”*

5. In case at hand, solitary blow was given by the applicant to the deceased at his left thigh – non-vital part which has caused cut of femoral vessel. By any stretch of imagination, one cannot say that the applicant knew the location of femoral vessel and its fatal result on its cut. As per prosecution case, other four accused had caught hold the victim, meaning thereby, victim was made defenseless still the applicant gave a single blow that too on thigh instead of other vital parts of the body which is factor to be weighed in favour of the applicant. Concededly while dealing with the bail application, the Court is not expected to martial material nor to express decisive opinion about the occurrence. However, it is open to form prima facie view if the facts are

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apparent and clear. In the above circumstances, on prima facie basis intention to kill cannot be gathered. The investigation is complete and charge-sheet has been filed. The applicant is young boy aged 23 years. Trial will take considerable time for its disposal. Having regard to all these circumstances, applicant can be released on bail on certain stringent terms, hence following order:-

(I) Application stands allowed.

(II) The applicant/accused Sk. Zuber S/o. Sk. Dastagir is released on bail on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount.

(III) The applicant/accused shall attend concerned Police Station on every alternate Monday between 10.00 a.m. to 12.00 noon till conclusion of trial.

(IV) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

**JUDGE**

Gohane.