

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

CRIMINAL APPLICATION (BA) NO.1115 OF 2021

(Mohammad Zubair Mohammad Haroon Vs. State of Maharashtra thr. PSO PS
Barshitakli, Dist. Akola)

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

Court's or Judge's orders.

Mr. A. V. Gupta, Senior Advocate with Mr. N. R. Tekade, Advocate for
Applicant.

Mr. N. R. Rode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 29th NOVEMBER, 2021.

The applicant, his brother Mohammad Umair and his father Mohammad Haroon allegedly assaulted Mr. Juber Khan on 15.10.2020, with iron pipe and knife. Mr. Juber Khan succumbed to injuries suffered and the Barshitakli Police Station registered offence punishable under Section 302 read with Section 34 of the Indian Penal Code (IPC) and the relevant provisions of the Arms Act.

2. I have granted bail to co-accused Mohammad Umair vide order dated 06.09.2021 in Criminal Application (BA) 591/2021.

3. While granting bail to the co-accused, I have noted that the co-accused Mohammad Umair inflicted a solitary knife blow on the thigh which cut the popliteal artery and femoral vein. Relying on certain decisions of the

Apex Court, I held that a strong *prima facie* case is made out since whether the intention was to cause death or to cause such injury as would in the ordinary course lead to death, is extremely contentious.

4. In so far as the present applicant is concerned, he is apparently attributed the role of assaulting Mr. Juber Khan with iron pipe. While granting bail to the co-accused I have noted that injuries 1 to 16 referred to in the autopsy report appear to have been inflicted by iron pipe and that injuries 1 to 15 are on the non-vital parts of the body, to be precise on hand and leg. However, injury 16 which, *prima facie*, could have been caused by the iron pipe is on testicle, which may be an unfortunate and unintended consequence.

5. Considering that co-accused Mohammad Umair is granted bail on the basis of certain observations, which are briefly referred to supra, the applicant herein is also entitled to bail on the principle of parity.

6. The application is allowed.

7. The applicant be released on bail in connection with Crime 633/2020 registered with Police Station Barshitakli, District Akola for offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4/25 of the Arms Act, on executing PR bond of Rs.16,000/- (Rupees Sixteen Thousand) with one solvent

surety of the like amount.

8. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

9. The applicant shall not leave the country without the permission of the jurisdictional Court.

JUDGE

NSN