

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

Criminal Application (BA) No. 639 of 2022

Kunal S/o Suresh Kharabe

Versus

State of Maharashtra, through Police Station Officer, Selu Tah. Selu,
Dist. Wardha

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.S.Lambat, Advocate for the applicant.

Ms Mrunal Barbde, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 6th JULY, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No.608 of 2021 dated 24th October, 2021 registered with Police Station Selu, Dist. Wardha for the offence punishable under Sections 143, 147, 148, 149, 302, 341 of Indian Penal Code.

2. Shri Lambat, learned counsel for the applicant states that from the postmortem report it can be seen that the injury caused to the head of the deceased was the cause of death of the deceased and if the role attributed to the applicant, is seen the said injury was not caused because of the applicant. He

further submits that considering the role attributed to the applicant in the First Information Report and considering the fact that the investigation is completed, he may be released on bail.

3. Learned counsel for the applicant further argues that the applicant is 19 years old young boy who is taking education and considering his age, this Court may consider his case for grant of bail.

4. On the other hand, learned Additional Public Prosecutor strongly opposed the application and she submits that the offence is very serious. The accused persons formed an unlawful assembly and committed murder.

5. She submits that as section 149 of Indian Penal Code is applied to the present case, it is not relevant whether the death caused because of injury resulted by the assault of the applicant or other accused persons. The fact that the applicant was present at the time of incident as a member of unlawful assembly, is sufficient to hold him guilty of the said offence.

6. It is further pointed out that even there are criminal antecedents against the applicant.

Accordingly, she prays for rejection of the present application.

7. I have perused the chargesheet and the First Information Report.

8. The allegations in the First Information Report though indicate that the injury to the head of the deceased was the cause of death and though it was not caused because of the applicant, there is *prima facie* sufficient incriminating material to show that he was present at the spot of incident as a member of unlawful assembly with common object as defined under Section 141 of the Indian Penal Code. Thus, *prima facie*, it cannot be said that the role of the applicant is not similar with the role of the main accused or other accused persons.

9. Moreover, there are criminal antecedents against the applicant and one N.C. report bearing No. 284 of 2020 dated 28th April, 2020 was also registered against the applicant.

10. In that view of the matter, I am of the opinion that if the applicant is released on bail, there is every possibility that he may pressurize the prosecution

witness and in that event there will be no fair trial.
Accordingly, I pass the following order.

- i. Application is rejected.

[ANIL S. KILOR, J.]

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