

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

Criminal Application (BA) No. 799 of 2022

Arjun Mohan Ghatayde

Versus

State of Maharashtra, through Police Station Officer, Police Station
Khamgaon (Rural), Tq. Khamgaon & Dist. Buldhana

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

Court's or Judge's Order

Shri S.V.Sirpurkar, Advocate for the applicant.

Shri V.A. Thakare, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 24th August, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 232 of 2019 registered with Police Station Khamgaon City, Dist. Buldhana for the offence punishable under Section 302 of Indian Penal Code read with Section 34 of Indian Penal Code.

2. Shri Sirpurkar, learned counsel for the applicant submits that this is the third application moved by the applicant for bail. It is submitted that first application was rejected on 29th October, 2020 and thereafter the second application was rejected on 21st December, 2021. It is pointed out that while rejecting the second application, liberty was granted to revive the prayer for grant of bail, if no significant progress in the

trial in next four months. He submits that the applicant is in jail from last three and half years and as there is no possibility that in near future the trial will conclude, he prays for grant of bail.

3. It is submitted that as the applicant has already undergone substantive period of incarceration in the above referred backdrop, keeping him in jail for certain period, would amount to pre-trial punishment.

4. On the other hand, learned Additional Public Prosecutor has strongly opposed the application and submits that twice the application was rejected on merit and therefore only because there was no progress in last few months in the trial, cannot be a ground to grant bail.

5. He further submits that considering severity of punishment which conviction will entail, incarceration of three and half years cannot be said to be a substantive period of incarceration. Accordingly, he prays for rejection of the present application.

6. I have perused the application and the orders passed by this Court on earlier two applications. This Court while rejecting the first application has observed thus:

“7. In so far as the present applicant Arjun @ Sonu is concerned, there are overwhelming circumstances on record, which if proved, may form such complete chain

as would exclude the possibility of innocence. The incriminating circumstances are not limited to the last scene theory and recovery. While the seizure of bloodstained clothes and the recovery of the knife are indeed incriminating circumstances, as many as three close relatives have stated that the applicant Arjun @ Sonu confessed to have murdered Vicky due to previous enmity.

8. Witness Rohit Pacherwal is the cousin of the applicant. Witness Sunita Pacherwal is the cousin aunt of the applicant and witness Neha is a close relative. The said three witnesses have stated in unison that the applicant Arjun @ Sonu came to their house in the night intervening 2.5.2019 and 3.5.2019 between 1.30 a.m. to 2.00 a.m. He was accompanied by co-accused Rahul. The applicant and Rahul explained the visit at the odd hours stating that they attended a marriage at Risod and since road to Khamgaon was in a bad condition, they decided to take a halt. The witnesses have further stated that the applicant and Rahul had dinner and slept. The next morning, the witnesses noticed that the clothes of the applicant were bloodstained. When confronted, the applicant confessed that he and Rahul had murdered Vicky at Khamgaon and then fled to escape the law. The applicant justified the murder by declaring that had he not murdered Vicky, Vicky would have murdered him some day or the other.

9. The bloodstained clothes of the applicant have been recovered from the residence of the witnesses where the applicant and Rahul took shelter.

10. In my considered view, there is more than ample material to connect the applicant with the crime. As many as 19 blows were struck with sharp edged weapons and on the vital part of the body. The likelihood of delayed trial, cannot be a circumstance in favour of the accused in view of the heinous nature of

offence which may attract death penalty or life imprisonment, if proved.”

7. This Court while rejecting the second application has taken into consideration the above referred findings and even denied the request of the applicant to expedite the trial.

8. Thus, considering the observations recorded by this Court while rejecting the first application, I am of the opinion that since the applications were rejected on merit, only for the reason that there is no substantive progress in the trial, cannot be a ground to grant bail in such a serious offence, unless he undergoes substantive sentence. Accordingly, I pass the following order:

- i. Criminal Application is rejected;
- ii. Considering the period of uncertain undergone by the applicant, trial Court is requested to expedite the trial.

[ANIL S. KILOR, J.]

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