

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

**CRIMINAL APPLICATION (BA) NO.1051 OF 2022**

Atul S/o Gajanan Atalkar .Vs. State of Maharashtra, through P.S.O., P.S. Sarmaspura,

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

Court's or Judge's Order

Shri A.S. Mardikar, Senior Advocate a/b Shri H.M. Bobade, Adv. for the applicant.  
Shri S.D. Sirpurkar, A.P.P. for the non-applicant/State.

**CORAM : ANIL S. KILOR, J.**  
**DATED : 22/09/2022**

Heard.

2. The applicant is seeking bail in Crime No.61 of 2022, dated 06.03.2022, registered with Police Station Samraspura, District: Amravati (Rural), for the offence punishable under Sections 302 of the Indian Penal Code.

3. The case of the prosecution is that out of rivalry on 05.03.2022, the applicant assaulted the deceased by axe wherein, he sustained injuries on the head and he succumbed to it.

4. There is one eye witness to the said incident i.e. Atul Sudhirrao Sangole. According to him, the accused and the applicant were present in a dinner organized in Durgadevi temple and he saw that the deceased received a phone call and thereafter, he suddenly went from there. He further states that the applicant followed the deceased and therefore, he went to call the applicant. Thereupon, he saw that the applicant was inflicting a blow by axe on the head

of the deceased. According to the said witness, at that time Dyaneshwar Uttamrao Khadse came there and asked the applicant, not to assault the deceased. This statement of Atul Sangole was recorded on 09.03.2022, i.e. three days after the alleged incident.

5. Furthermore, the witness Dyaneshwar Uttamrao Khadse whose name was referred by the eye witness Atul Sangole, does not support the story narrated by Atul Sangole. According to the Dyaneshwar Khadse, when he reached at the spot of incident he saw that, the deceased was lying on the ground in pool of blood. The statement of witness Dyaneshwar Khadse was recorded on 11.03.2022 i.e. after six days of the incident.

6. Thus, except Atul Sangole, there is no eye witness, who has seen the incident.

7. In the above referred backdrop, considering the discrepancies in the report lodged by the brother of the deceased and statement of Atul Sangole and Dyaneshwar Khadse, *prima facie* it creates doubt about the veracity of the role attributed to the applicant or the involvement of the applicant.

8. As far as recovery under Section 27 of the Indian Evidence Act is concerned, the axe was recovered from the agricultural land which is accessible to all.

9. There is no explanation about recording of the statement of eye witness at belated stage i.e. after four days of the incident.

10. Thus, considering the character of the evidence and the fact that, in near future, there is no possibility that the trial will commence or it will be concluded, I am of the opinion that keeping the applicant in jail for uncertain period would amount to pre-trial punishment.

11. Shri Sirpurkar, learned APP strongly opposes the present application on the ground that the offence is serious. Furthermore, the witnesses and the applicant are resident of same village Haram, therefore, there is every possibility that the applicant may pressurize the prosecution witnesses.

12. Shri Mardikar, Senior Advocate, thereupon states that the applicant is ready to stay out of Tq. Achalpur, till the culmination of trial, except for the trial. Thus, in the above referred backdrop, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant shall be released on bail in Crime No.61 of 2022, dated 06.03.2022, registered with Police Station Samraspura, District: Amravati (Rural), for the offence punishable under Sections 302 of the

Indian Penal Code, on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the territorial jurisdiction Tq. Achalpur, Dist. Amravati, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address along with name of the nearest Police Station and shall attend on 1<sup>st</sup> and 16<sup>th</sup> of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.

The criminal application is **disposed of** accordingly.

**JUDGE**