

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

CRIMINAL APPEAL NO. 757 OF 2022

(Azhar @ Raja @ Arman s/o Jafar Sheikh ..vs.. The State of Maharashtra, through PSO, Gittikhadan
PS, Nagpur and another)

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

Court's or Judge's orders

Mr. D.V. Chauhan, Counsel for the appellant,
Mr. T.A. Mirza, Addl.P.P. for respondent 1/State,
Mr. R.D. Hajare, Counsel (appointed) for respondent 2.

**CORAM : ROHIT B. DEO &
URMILA JOSHI-PHALKE, JJ.**
DATED : 02-12-2022

Exception is taken to the order dated 23-10-2021 rendered by the learned Additional Sessions Judge-12, Nagpur in Miscellaneous Criminal Application 2436/2021 whereby the learned Additional Special Judge was pleased to reject the application preferred by the appellant-accused for grant of bail in connection with offence punishable under Section 302 of the Indian Penal Code (IPC) read with Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Act).

2. The alleged incident occurred on 26-3-2021.

3. The crime is registered on the basis of report lodged by Roshani, who is the sister of the deceased Akshay.

4. It is the case of the prosecution that the accused Raja @ Azhar and Akshay were pigeon fanciers and were breeding pigeon. An altercation ensued amongst the two, during the course of which the accused inflicted a knife blow on the chest of the deceased, which proved fatal.

5. The investigation is complete, the final report is submitted and we have the benefit of scrutinizing the material which is placed on record along with the final report.

6. We are inclined to allow the appeal and grant bail and we may briefly spell out the reasons.

7. The accused has no adverse antecedents and is relatively young.

8. Perusal of the statements of the eyewitnesses, particularly the supplementary statement of Roshani which is recorded on 30-3-2021 and the statement of Siddharth Tagde, who is the father of the deceased, reveal that there was a physical altercation going on and fist blows were dealt by both the accused and the deceased. The statements of Roshani and Siddharth are that despite Roshani imploring the deceased to back off, he did not relent and continued with the altercation. While we consciously refrain from indulging in more profound and deeper examination of the material on

record, which, in any event, is unnecessary, we find *prima facie* substance in the submission of the learned Counsel Mr. D.V. Chauhan that even if the prosecution case is established, the offence may not be under Section 302 of the IPC. We clarify this is only a *prima facie* observation made strictly for the purpose of deciding this appeal.

9. We note from the autopsy report that there is a single injury to the chest, which has proved fatal. Considering that the appellant has no adverse antecedents, and the apprehension of the learned Counsel Mr. R.D. Hajare, who is representing the victim, that the appellant may influence the witnesses, can be addressed by imposing stringent conditions, we find that a case is made out for grant of bail.

10. The appeal is allowed.

11. The appellant shall be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rupees Fifty Thousand) along with surety of like amount.

12. The appellant shall remove himself from the territorial jurisdiction of Nagpur City and reside at Ramtek as is undertaken.

13. The accused shall furnish the address at Ramtek and the contact numbers to the Investigating Officer

within seventy-two hours from the release from custody.

14. The accused shall attend the local police station at Ramtek on every Monday of the week and shall obtain an endorsement in a diary specially maintained.

15. The accused shall not make any attempt to influence the witnesses or to otherwise obstruct the course of the trial.

16. The accused shall attend each and every date of hearing scrupulously.

17. The fees of the learned Counsel appointed for respondent 2 be quantified and paid in accordance with the rules.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B. DEO, J.)

adgokar