

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

Criminal Application (BA) No. 1219 of 2022

Shubham Gautam Athawale

Versus

State of Maharashtra, through Police Station Officer, Police Station
Borgaon Manju, Taluka and District Akola

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

Court's or Judge's Order

Shri K.H.Anandani, Advocate for the applicant.

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

CORAM : ANIL S. KILOR, J.

DATED : 13th DECEMBER, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 74 of 2022 registered with Police Station Borgaon Manju, Akola for the offence punishable under Section 302 read with Section 34 of Indian Penal Code.

2. Learned counsel for the applicant submits that except the statement of eye witness namely Rajesh Namdeo Sirsat, there is nothing incriminating against the applicant. It is further submitted that he was not named in the First Information Report and subsequently the eye witness disclosed the name of the applicant which itself creates doubt about the prosecution story. He further submits that though eye

witness in his statement states that he recognized all the accused persons in the light of street, however, in spot panchanama there is no mention of such street light at the spot. He therefore submits that there is sufficient ground to doubt the story of the prosecution. He further submits that the applicant is in jail from last eight months and considering the nature of material against the applicant, he should be released on bail.

3. On the other hand, learned Additional Public Prosecutor strongly opposed the application and submits that Rajesh Namdeo Sirsat is an eye witness and therefore at this stage prayer for grant of bail, cannot be considered.

4. Learned Additional Public Prosecutor further submits that the submissions like whether there was a pole or not or whether the eye witness disclosed the name without recognizing the applicant or not, are the matter of trial. At this stage, this Court can only considered where *prima facie* case is made out to show involvement of the applicant. Accordingly, he prays for rejection of the present application.

5. I have perused the chargesheet, the First Information Report lodged by one Shivdas Tarale who is the brother in law of the deceased.

6. In the report, he states that on receiving information that his brother in law was being murdered, he reached the spot where he made an inquiry and on inquiry he got to know from eye witness Rajesh Sirsat that three persons namely Jitendra Sangade, Akash More and his friends committed murder of the deceased.

7. It can be seen from the chargesheet that the spot of incidence is a place in front of welding shop of the eye witness Rajesh Sirsat who was present at the time of incident in the shop and witnessed the entire incident. In the statement of Rajesh Sirsat dated 1st March, 2022, he has specifically mentioned the name of the applicant.

8. Thus, considering the seriousness of the offence and the statement of eye witness, at this stage, it can safely be said that *prima facie* there is sufficient incriminating material against the applicant to show his involvement in the alleged offence. In the above referred backdrop, I am not inclined to grant bail. Accordingly, it is rejected.

[ANIL S. KILOR, J.]

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