

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

Criminal Application (BA) No. 1338 of 2022

Vitthal S/o Ashok Khambayatkar

Versus

**The State of Maharashtra, through the Police Inspector, Amdapur Police
Station, Tal. Chikhali, 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 A.D.Raut, Advocate for the applicant.

Shri N.R.Rode, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 7th DECEMBER, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 153 of 2022 registered with Police Station Amdapur, Tal. Chikhali, Dist. Buldhana for the offence punishable under Sections 302, 323, 324, 504, 506, 143, 147, 148, 149 read with section 34 of Indian Penal Code and Section 135 of Maharashtra Police Act, 1951.

2. The prosecution case in short is that on the basis of the complaint lodged by one Nilesh Chormare who is brother of the deceased Yogesh, offence came to be registered against the present applicant and other accused persons. The complainant in his complaint has alleged that on 05.04.2022 at around 9.00 pm when the complainant and the deceased were at their house,

the neighbour namely Sk Noor Sk. Shankar and his wife Nazrana Be Sk. Noor were moving in front of the house abusing the complainant and his family members on seeing such incidence the deceased came out and asked the accused persons not to use filthy language in front of their house. While pacifying the accused persons the accused Nazrana Be hold the color of the complainant and assaulted with stick and slapped him on his face. The complainant further states that while the accused persons were assaulting the complainant and younger brother i.e. Yogesh the deceased tried to intervene and pacify the accused no.1 and 2. While the deceased tried to intervene and to pacify the quarrel Sk. Noor took an iron rod in his hand because of which the deceased was injured. The complainant however states that at the same time the present applicant and Sk. Chand also came on the spot and assaulted the deceased and the complainant with the help of sticks assaulted on the back and legs of the deceased. The complainant had further stated that the accused persons have also threatened the complainant and the deceased. The complainant further states that however the because of the intervention of the nearby villagers they were rescued and they were taken to the hospital for treatment. Since the complainant and the injured

brother of the complainant were under going treatment the First Information Report came to be lodged on 9th April, 2022 though the incident had occurred on 5th April, 2022. On the basis of the said allegations, First Information Report came to be lodged under the provisions of Indian Penal code against the present applicant.

3. After going through the chargesheet and the contents of the First Information Report, it can be seen that the incident was not premeditated but it took place in hit of anger.

4. Moreover, after going through the postmortem report it shows that there were three injuries found on the person of the deceased which includes multiple contused abrasion present over the right proximal metacarpo-phalangeal joints of index, middle, ring and little fingers of size 0.5 cm x 0.5 cm, reddish, Central line mark present over the right subclavicular region, therapeutic i.v mark present over the dorsum of both hands. The cause of death is head injury and the author of the same is co-accused Sheikh Noor Sheikh Shankar as per the First Information Report. As far as the assaults by the other accused persons including the applicant there were no

corresponding injuries found on the person of the deceased.

5. Thus, the presence of the applicant on the spot is not sufficient to hold him responsible for the death of deceased, as no specific overt act is attributed against the applicant.

6. In the circumstances, considering the fact that the chargesheet has been filed and the period of incarceration of the applicant in the above referred circumstance, I am of the opinion that the applicant is entitled for grant of bail. Accordingly, I pass the following order.

- i. Criminal application is allowed;
- ii. It is directed that the applicant shall be released on bail in Crime No. 153 of 2022 registered with Police Station Amdapur, Tal. Chikhali, Dist. Buldhana for the offence punishable under Sections 302, 323, 324, 504, 506, 143, 147, 148, 149 read with section 34 of Indian Penal Code and Section 135 of Maharashtra Police Act, 1951, on furnishing P.R.Bond of Rs.25,000/- with one solvent surety in the like amount;
- iii. The applicant shall attend the concerned Police Station as and when his presence is required;
- iv. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not to tamper with the evidence.

[ANIL S. KILOR, J.]