

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

**CRIMINAL APPLICATION (BA) NO.346 OF 2023**

Durgesh Marotrao Pohankar

Vs.

State of Maharashtra

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

Court's or Judge's orders.

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Shri P.V. Navlani, Advocate for applicant.

Shri S.S. Doifode, APP for non-applicant/State.

**CORAM : ANIL L. PANSARE, J.**

**DATE : MAY 3, 2023.**

This is an application under Section 439 of the Code of Criminal Procedure (Code).

2. The applicant has been arrested on 14.11.2022 in Crime No.456/2022 registered with Police Station, Talegaon, District Amravati for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, 'IPC').

3. Having heard both sides and having gone through the material placed before me, it transpires that the accusation against the applicant is that he along with co-accused have committed murder of one Gajanan Mandale. Accused no.1 – Nita Mandale is the wife of deceased Gajanan. Accused no.2 – Satish Khangar and accused no.4 – Ajay Khangar are the brother of the accused no.1. Accused no.3 – Durgesh Pohankar (present applicant) is brother-in-law of the accused nos.1,2 and 4.

4. Learned counsel for the applicant has rightly pointed out that there is no direct evidence against the applicant. Infact, he submits that there is no direct evidence against any of the accused. The charge-sheet indicates that the motive behind the crime is frequent quarrel between the accused no.1 and the deceased on the count that the accused no.1 has illicit relationship with one Vinoba Bawane. However, Vinoba Bawane is not accused in the crime. Thus, it is nobody's case that this crime has been committed at his instance.

5. Learned APP submits that the crime has been committed because accused no.1-Nita was being harassed by the deceased on the count of illicit relationship. The accused persons have conspired to eliminate the deceased and have successfully done so.

6. Learned APP has invited my attention to the statement of son of accused no.1, who states that on Sunday there occurred quarrel between her parents i.e. accused no.1 and Gajanan. Gajanan had beaten Nita. Witness and Nita came to the house of Nita's father. Gajanan took quarrel with Nita's father as well, at that time, all the accused persons were present. Thereafter, Gajanan went back to his house. On the next day, the witness was with his grandfather i.e. father of the applicant. On the third day, the witness came to know that his father Gajanan has expired.

7. This statement has been relied upon by the learned APP

to point out that when there occurred quarrel between Nita's father and Gajanan, all the accused persons were present. Thus, it is suggested that they got annoyed with the frequent quarrel between Nita and Gajanan so also between Nita's father and Gajanan and therefore eliminated Gajanan.

8. This theory, without there being any evidence is a far fetched proposition. Learned APP then submits that the blood stain cloths and bed-sheet has been recovered at the instance of the accused-Satish. This fact, however, does not really connect the applicant with the crime.

9. The charge-sheet has been filed. The charge is not yet framed. It will take time to commence and conclude the trial. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents.

10. In view of above and considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

11. The observations made in this order are prima facie in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

12. Resultantly, the following order is passed.

**ORDER**

- (i) The application is allowed.
- (ii) Applicant- Durgesh Marotrao Pohankar, be released on bail, in Crime No.456/2022 registered with Police Station, Talegaon, District Amravati for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code , on he furnishing P.R. Bond in the sum of ₹50,000/- with one or two sureties in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.
- (iv) The applicant shall cooperate in the investigation and, if charge-sheet is filed, the applicant shall regularly attend the court and cooperate the learned trial Court to complete the trial for the above offences. The applicant shall not seek adjournments, except under extreme circumstances to the satisfaction of the trial Court.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (vi) The applicant shall maintain law and order.

(vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

*Wagh*