

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

**CRIMINAL APPLICATION (BA) NO.1389 OF 2022**

Jagdish s/o Tulshiram Kowe Vs. State of Maharashtra and another

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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 R.M. Daga, Advocate for applicant.  
Shri M.J. Khan, APP for non-applicant no.1/State.

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

**DATE : MARCH 08, 2023.**

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

2. The applicant has been arrested on 26.04.2022 in Crime No.61/2022 registered with Police Station, Durgapur, District Chandrapur for the offence punishable under Section 302 of the Indian Penal Code (for short, 'IPC').

3. Briefly stated the accusation against the applicant is that he has killed his elder brother. Learned counsel for the applicant submits that the deceased was the nuisance to the entire family. My attention is invited to the statement of wife of the deceased to point out that the deceased had strained relationship with his wife. He used to harass her and therefore the wife started residing separately. The statement of wife of the deceased also indicate that the deceased was habitual drunker. Learned counsel for the applicant has then invited my attention to the NC report filed by the wife of the applicant against the deceased alleging that the deceased had abused and manhandled her. The counsel has then invited my

attention to the oral report dated 26.04.2022 lodged by the wife of another brother of the applicant. She states that on 26.04.2022 the applicant was all set to transfer his household articles to another room allotted to him under the Government Scheme called 'Gharkul'. At that time, deceased interrupted and said to the applicant to not carry the household goods from in front of his (deceased's) house. On that count, there occurred quarrel between the applicant and the deceased. At that time, the applicant abused the deceased and then annoyed by the act of deceased went in the room and came back with axe and gave multiple blows on the head of deceased. The blows were inflicted from the blunt side, and not the blade, of the axe. In support, he has invited my attention to the medical report, which indicates that four lacerated wounds were found near the head.

4. Learned counsel for the applicant submits that the applicant is a disabled person having 40% permanent disability. The charge-sheet indicates that the incident has occurred at the spur of the moment. The accusation, at the most will attract ingredients of 304 Part II and not 302.

5. Learned APP submits that the accusation is serious and that there is direct evidence against the applicant.

6. No doubt there is direct evidence against the applicant and allegations are serious but then it is equally important to consider the attending circumstance that resulted in inflicting fatal blow to the deceased. In normal circumstances, a person will not kill his own brother. It appears, though *prima facie*

that, the previous acts of the deceased coupled with his quarrel with the applicant on the fatal day had a cumulative effect on the mind of the applicant and the applicant got annoyed and then brought axe from the room and inflicted the injury on the head of the deceased.

7. The charge-sheet is filed. The charge is not yet framed. It will take time to commence and conclude the trial. On enquiry of antecedences, the learned advocate for the applicant submits that there are no criminal antecedence against the applicant. The applicant is staying since long at the address given in the application.

8. In the circumstances and considering the peculiar facts of the case so also the presumption that the person accused of commission of a crime is considered innocent until proven guilty, in my considered view no fruitful purpose will be served by keeping the applicant behind bars. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

9. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The learned trial Judge shall not get influenced with the above observations.

10. Resultantly, the following order is passed.

#### **ORDER**

- (i) The application is allowed.
- (ii) Applicant- Jagdish s/o Tulshiram Kowe, be released

on bail, in Crime No.61/2022 registered with Police Station, Durgapur, District Chandrapur for the offence punishable under Section 302 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 not contact the victims or their relatives in any manner.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

**JUDGE**

*wagh*