



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

CRIMINAL APPLICATION (BA) NO.1028 OF 2023
(Prakash s/o Laxmanrao Shendre Vs. State of Maharashtra)

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

Court's or Judge's Order

Mr. M.V. Rai, Advocate for the applicant.
Ms T.H. Udeshi, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 21, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 03/03/2023 in connection with Crime No.205/2023 registered with Police Station Pulgaon, District Wardha for the offence punishable under Sections 307 and 302 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, 1951.

2. The crime is registered on the basis of report lodged by Sham Babaraoji Shingpure who alleged that on 02/03/2023 at about 9.00 p.m. when he was at his house one Chetan Kathane came to his house and approached to him and disclosed that the quarrel is going on between his brother Pankaj Shingpure and the present applicant on account of giving Kharra and present applicant has assaulted him by means of knife on his throat and on his waist and he is lying in injured condition near the house

of Suraj Ambadare. He immediately rushed to the spot and found that his brother was in the injured condition. He immediately taken to the hospital but during the treatment he succumbed to the death.

3. Learned Counsel for the applicant submitted that from the recitals of the FIR it revealed that the alleged incident is informed by Chetan Kathane whose statement is recorded by the Investigating Officer during investigation which is only to the extent that he has witnessed the present applicant and the deceased quarrelling with each other and thereafter deceased fallen on the ground. His statement under Section 164 of Cr.P.C. is recorded wherein he resiled from his earlier statement and only disclosed that he came to know about the incident from the other villagers. Learned Counsel submitted that except this eyewitness there is no other eyewitness to connect the present applicant with the alleged offence. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, the applicant be released on bail.

4. Learned Additional Public Prosecutor strongly opposed the application on the ground that the statement of the eye-witness and the statement of the other witnesses who disclosed that there was a quarrel between the deceased and the present applicant prior to deceased found in injured condition. The incriminating weapon is

also recovered at the instance of the present applicant when he was caught during his personal search. The postmortem report shows that deceased has sustained 17 injuries on his person which sufficiently shows that the deceased was assaulted by giving repeated blow. Considering the nature of the crime, the grievous offence is made out against the present applicant. In view of that, the application deserves to be rejected.

5. Having heard learned Counsel appearing for the parties and perused the investigation papers. From the recitals of the FIR it reveals that informant came to know about the incident as Chetan Kathane disclosed the said incident to him. He immediately rushed to the spot of incident and witnessed his brother in an injured condition. During investigation, the Investigating Officer has recorded various statements including the statement of Suraj Ambadare who also disclosed that after hearing the noise he came out from the house and saw the injured in the injured condition. The statements of the witnesses further show that they have witnessed the quarrel between the present applicant and the deceased before deceased was found in an injured condition. Admittedly, the eye-witness Chetan Kathane has resiled from his earlier statement when his subsequent statement under Section 164 of Cr.P.C. is recorded.

6. The another circumstance which connect the present applicant with the alleged offence is that he was

arrested on 03/03/2023 and during his arrest his personal search was carried out and during his personal search, the knife was seized from his person. Though the applicant has not filed on record the chemical analyzer (CA) report but the reply filed by the State wherein the statement is made by the learned Additional Public Prosecutor that from the CA report it reveals that there were blood stains on the knife and also on the T-shirt of the accused and the said blood stains matched with the blood group of the deceased. Considering the *prima facie* case made out against the present applicant and considering the circumstances that for the trifle reasons the applicant has lost his control and gave repeated blow on the person of the deceased, the offence is of a grievous nature for which punishment of life imprisonment is provided. In view of that, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*