

Krishna s/o Sidram Kamble ... **Applicant**
Age 25 years, Occu: Contractor
R/o Yeshwant Nagar, Murum,
Tq. Omerga, Dist. Osmanabad

The State of Maharashtra, ... Respondent
Through : Incharge Police Inspector,
Police Station Murum
Tq. Omerga, Dist. Osmanabad

CORAM : V. G. BISHT, J.
DATE : 18th August, 2021.

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 78/2021 registered with Murum Police Station, Tq. Omerga, Dist. Osmanabad for the offences punishable under Section 302 read with section 34 of the Indian Penal Code, 1860.

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3. It appears that the informant is mother of Balaji Suresh Kamble(since deceased). Accused Arvind Sidram Kamble had illicit relation with the wife of deceased. It is alleged that on 23.03.2020, at about 5.00 a.m., said Arvind gave a phone call to the deceased and the present applicant took him in his Omni Car towards a pond. Later on, said Arvind informed telephonically that deceased had died because of drowning. The informant claimed that deceased was well versed in swimming and as there were illicit relations between said Arvind and wife of the deceased, the applicant and other accused conspired and committed murder of the deceased.

4. Mr. A. B. Jagtap, learned counsel for the applicant, submits that earlier complaint of the informant was taken care of and investigated by the officer of the concerned police station and as nothing incriminating was found, the concerned police station had filed the report of accidental death. According to the learned counsel, there is nothing on record to substantiate that the applicant had committed murder of the deceased. In view of the fact that the case is based on circumstantial evidence and most of the part of the investigation is already over, the present case is not of that nature which requires custodial interrogation. Hence, the learned counsel urged to allow the application.

5. Mr. V. M. Kagne, learned A.P.P., on the other hand, vehemently opposed the submissions by contending that admittedly the

case is based on circumstantial evidence but the fact remains that the deceased was seen in the company of the present applicant and other accused and immediately thereafter the informant was informed about the death of the deceased. The learned A.P.P. has also filed on record the investigation papers for perusal.

6. Having regard to the contents of the first information report as also the investigation papers, there is no dispute that the present case is of circumstantial nature. As far as death of the deceased in question is concerned, I have also gone through the postmortem report made available on record by the learned A.P.P. No external injuries or for that matter internal injuries were found on the person of the deceased during the course of autopsy. The opinion as to the probable cause of death is "Death due to drowning". Prima facie, it does not appear that the applicant had, in any manner, physically assaulted the deceased. In view of this position, in my considered opinion, the application deserves consideration.

7. In view of above, the application is allowed.

8. Interim protection given by this Court on 28th May, 2021 is made absolute and is confirmed.

(V. G. BISHT, J.)

JPC