

The State of Maharashtra ... Respondent

Ms. P.P. Shinde- APP for the State.

1. This is an application under section 439 of Cr.PC..
2. The applicant herein is arrested on 28th July 2020 in Crime No. 152 of 2020 registered at Sangli Police Station, Sangli for the offences punishable under section 302, 364, 323 and 324 read with 34 of Indian Penal Code. The investigation is completed and charge-sheet is filed.
3. It is the case of the prosecution that on 28.07.2020 one Mr. Anil Nalwade lodged a report at the police station, alleging therein that he was acquainted with the present applicant. The first informant used to provide a JCB machine on Hire basis. On 27th July 2020, he had sent

deceased along with JCB Machine to a vacant plot for excavation. The present applicant is residing just opposite the said vacant plot where the JCB was being operated. One Kundankumar was employed as a driver on the said JCB. At about 1.00 p.m. the present applicant made a telephonic call to the first informant and asked him to stop the work and recall the JCB. Thereafter, the first informant was informed by the present applicant that his wife had seen Kundankumar molesting his young daughter. He was annoyed and therefore the applicant had asked the first informant to bring Kundankumar to the airport. The first informant had obliged. The applicant had assaulted Kundankumar with fist and kicks blows. The applicant had also brought a knife from the car and had attempted to assault Kunndankumar, however he was restrained by the first informant. The first informant had then taken Kundankumar to his home and questioned him whether he had committed the said act. Kundankumar had answered in the affirmative.

4. It is alleged that after half an hour Aniket Patil, Ganesh Patil and Vishal Mane had again brought Kundankumar to the airport area. The applicant had told the first informant to go home and that he would drop Kundankumar to his house. The first informant had left for his house. The first informant had again warned the present applicant

not to assault Kundankumar. Despite that Kundankumar was assaulted by all the four accused. The accused Aniket Patil has alleged to have stabbed Kundankumar in his chest and stomach and thereafter, the applicant had taken him to the hospital where Kundankumar succumbed to the injuries on the next day i.e. 28.07.2020.

5. The learned counsel for the applicant submits that the applicant had no intention to cause injury to Kundankumar much less to cause his death. The allegation against applicant is that he has assaulted with fist and kicks blows and upon perusal of the charge-sheet and recording of the statement of the eyewitnesses under section 164 of Cr.PC, it is clear that it was Aniket Patil who had brought the knife from the vehicle and had stabbed Kundankumar.

6. The learned counsel for the applicant submits that in fact, in a heat of passion the applicant had assaulted Kundankumar only with kicks and fist blows as he was annoyed with the fact that his young daughter was molested. He had no knowledge that Aniket Patil would stab the deceased. It is also submitted that it cannot be said that the applicant had shared common intention with Aniket Patil as there was no premeditation. The co-accused Aniket Patil is the author of the injuries which turned to be fatal. In view of this, *prima facie*, the

applicant deserves to be enlarged on bail. Hence, the following order:-

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- and one or more solvent sureties in the like amount;
- (ii) The applicant shall report to the Police Station on Monday, Wednesday between 10.00 to 12.00 noon till 30th June 2021;
- iv) The application is disposed of.

Parties to act upon authenticated copy of the order.

(SMT. SADHANA S. JADHAV, J)