

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

CRIMINAL APPLICATION (BA) NO. 169/2021
(Kamlesh Suresh More vs. State of Maharashtra : Through PSO PS
Samudrapur, Wardha)

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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 order

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Mr. M.N. Ali, Advocate for the applicant/s
Ms.Nivedita Mehta APP for respondent-State

CORAM : MRS.SWAPNA JOSHI, J.

DATED : 11th March, 2021.

1. The applicant has filed the present Application under Section 439 of the Cr.P.C. seeking regular bail, for offence punishable u/s. 302 of the Indian Penal Code, registered at Police Station Samudrapur, Wardha, in respect of Crime No. 419/2019.

2. I have heard learned counsel for the respective parties. Perused the case papers.

3. The prosecution case in brief is that the deceased is the maternal uncle of the applicant. The applicant married with a girl who was not from their community inasmuch as it was a love marriage. On 29.8.2019, the deceased went to the house of the applicant and started abusing him saying that he has brought the girl from 'Ganga-Jamuna' (red-light area). The applicant got enraged and in a fit of rage, he assaulted the deceased by means of a knife, due to which the deceased succumbed to the injuries on the same day.

4. Learned Advocate for the applicant vociferously contended that the incident had happened in a spur of moment and there was no intention on the part of the applicant to kill his maternal uncle. Only because the deceased abused the applicant well as his wife, in a fit of anger, the applicant assaulted the deceased. He submitted that even the statement of the witnesses indicate that as the applicant got annoyed, he assaulted the deceased. Learned Advocate further contended that at the most the offence may fall within the purview of Section 304 Part II of the IPC .

5. Learned APP opposed the Application contending that there are eye witnesses to the incident.

6. After hearing both sides and on a perusal of the case-papers and the reply filed by the prosecution, it *prima facie* appears that the incident had taken place in a spur of moment and the offence may come within the purview of Section 304 Part II IPC, which is a lesser offence than Section 302 IPC, and since the investigation is complete and the charge-sheet has been filed, I am of the opinion that the applicant can be released on bail by imposing certain terms and conditions. Hence the order :-

ORDER:

The applicant -Kamlesh Suresh More, be released on bail for offence punishable u/s.302 of the Indian Penal Code, on his executing a PR bond in the sum of Rs. 30,000/- (rupees thirty thousand) with one or two solvent sureties in the like amount, on the following conditions :-

- (i) He shall attend the concerned Police Station, on every 1st and 3rd Saturday of each month, between 11.00 and 2.00 pm, till the trial commences.
- (ii) He shall provide his residential address and cellphone number to the concerned Investigating Officer and shall not change the same without prior intimation to the Investigating Officer.
- (iii) He shall not tamper with the prosecution witnesses in any manner.
- (iv) He shall keep himself away from the limits of area where the complainant and other witnesses are residing.
- (v) Two consecutive absence without reasonable cause will entail the prosecution to move for cancellation of bail.
- (vi) Any observations made in this order are only for granting bail to the applicant and it shall not come in the way of the trial Court, during trial.

Criminal Application stands disposed of.

JUDGE

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