

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

CRIMINAL APPLICATION (BA) NO. 177/2021
(Amol Shankar Kakde vs. State of Maharashtra : Through PSO PS Wani
Dist. Yavatmal)

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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
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 Wani, Dist. Yavatmal , in respect of Crime No. 842/2020.

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

3. The prosecution case in brief is that on 16.09.2020, the deceased i.e. husband of the complainant, was brought by his friend to the house in an injured condition. On enquiry, he informed that at about 6.30 pm when he went to buy eggs from the hand-cart of the applicant, the applicant said to him that he would not give him eggs and he should go from that place. On this premise, there was some sort of altercation between them. While the deceased was proceeding further, the applicant assaulted him by means of stick. When the deceased returned home, the complainant said that she would take him to the hospital, however

the deceased refused and asked her to bring medicine from the nearby medical shop. The deceased then went to sleep. In the next morning, the complainant showed her inclination to take the deceased to the hospital but unfortunately, he died.

4. Learned Advocate for the applicant vociferously contended that the applicant had no intention to kill the deceased. The *post-mortem* report indicates that there were injuries on the abdomen of the deceased and if at all the deceased would have been taken to the hospital immediately, he would have been survived. He submitted that at the most the offence may fall within the purview of Section 304 Part II of the IPC which is a lesser offence than Section 302 of the IPC.

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

6. Perusal of the PM report indicates that contusion and abrasions were noticed on the stomach. *Prima facie*, I find substance in the contention of the learned Advocate for the applicant that if the deceased would have been taken to the hospital, he might have been saved.

7. After hearing both sides and on a perusal of the case-papers and the reply filed by the prosecution, considering the manner in which the incident had taken place and the fact that that charge-sheet has been filed and there is every possibility that the offence may fall within the purview of Section 304 Part II of IPC, I am of the view that the applicant may be enlarged on bail. Hence the order :-

ORDER:

The applicant -Amol Shankar Kakde, 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