

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

CRIMINAL APPLICATION [BA] NO. 340/2021.

Suresh Warlu Madavi

-VERSUS-

State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri V.N. Morande, Advocate for the Applicant.
Shri I.J. Damle, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 17, 2021.

Hearing was conducted through Video
Conferencing.

2. Arrest of the applicant in Crime No.215/2020 registered with Aheri Police Station, District Gadchiroli for offence punishable under Section 302 of the Indian Penal Code led the applicant to approach this Court for grant of bail. While claiming bail, it is primely argued that even if the incident is accepted as it stand, it is a case of exercising right of private defence in which the deceased succumbed to the injuries. It is argued that the

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deceased was real brother of the applicant and there was no enmity nor there are any antecedents against the applicant.

3. The State has resisted the bail by filing reply-affidavit. It is contended that there are eye witnesses to the incident, who have specifically stated that the applicant has assaulted his elder brother by means of a knife. It is argued that initially the applicant dealt stick blow, instigated the deceased, on which there was the occurrence.

4. The applicant and deceased are real brothers. It is the case that on 04.07.2020 around 6 p.m., there was a scuffle between two real brothers in the courtyard, where in both sustained stab injuries. Resultantly the applicant remained indoor patient for 23 days, whilst the deceased succumbed to the injuries within proximity. Son of the deceased namely Rajnikant lodged report regarding the occurrence. Though he cannot be termed as an eye witness in real sense, however, he has witnessed the happenings soon before the assault. It is his statement that at the relevant time there was quarrel between two brothers and at that time his father i.e. deceased was holding a

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knife. The informant tried to intervene, however, deceased asked him to go away, hence, he went to call villagers to pacify the quarrel. The police recorded statement of wife of accused who was residing under the same roof. She stated that at the relevant time, there was oral altercation in between two brothers. At that time, the deceased got annoyed, went inside the house brought a knife and dealt a blow at the stomach of the applicant. Thereafter, the applicant snatched the knife and inflicted blows on the chest of the deceased. The third version is coming through the statement of a nearby resident namely Mahesh Arka, who is a Police Patil. He claimed to have witnessed the incident. It is his statement that at the relevant time the deceased was cleaning fish by knife. On arrival of the applicant there was a scuffle in which initially the applicant dealt stick blow to the deceased, on which the later has stabbed the applicant by knife which he was already having. He further stated that then the applicant snatched the knife and inflicted blows at the chest of the deceased.

5. The learned Counsel for the applicant has strongly criticized the statement of Police Patil Mahesh

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on the premise that after 40 days from the occurrence his statement is recorded in which for the first time a new story that the applicant initially inflicted stick blow has been foisted. Pertinent to note that no stick is shown to have been seized from the place of occurrence. The submission requires consideration because though this witness is a police patil and a nearby resident, his statement was recorded after a long gap of 40 days. Of course it is a matter of trial to appreciate the things in proper perspective.

6. By and large it is evident that there was a quarrel in between two brothers in which the deceased was holding a knife, and he had inflicted knife blows to the applicant who sustained stab injuries at his stomach. The statement conveys that the applicant has snatched knife from the deceased and then inflicted blows.

7. Prima facie there is substance in the contention of applicant about exercising his right of private defence. Of course again it is a matter of trial as to who was the aggressor and whether right of private defence is available to the applicant to the extent of causing death. Notably, the applicant has

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sustained stab injury on his stomach and was hospitalized for 23 days. This circumstance prima facie supports the defence. It is not the case that there was a trite enmity or it was a pre-planned occurrence. There is no question of repetition of the crime, if the applicant is released on bail. There are no antecedents against the applicant. The trial will take its own time for disposal according to law. In the circumstances, there is no necessity to detain the applicant behind bars. Suffice to say that the applicant has made out a case for grant of bail. It is made clear that the above observations are restricted for the purpose of dealing this Bail application, and the same shall not come in the way of the Trial Court while considering the case on merits. Hence, the following order.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant / accused – Suresh Warlu Madavi be released on bail in connection with Crime No. 215/2020 registered with Aheri Police Station, District Gadchiroli for offence punishable under Section 302 of the Indian Penal Code on his furnishing P.R. Bond of Rs.25,000/- with one or two

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sureties in the like amount.

- (iii) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (iv) Pending applications if any, stands disposed of.

JUDGE

Rgd.