

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

CRIMINAL APPLICATION (ABA) NO.442 OF 2021

Mohammad Sohel Parvez s/o Mohd. Ismail

Vs.

State of Maharashtra through PSO, P. S. Yavatmal (city) Dist. Yavatmal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R. M. Daga, Advocate for applicant.
Shri I. G. Damle, APP for non-applicant.

CORAM : VINAY JOSHI, J.

DATED : 11/08/2021

In anticipation of arrest of Crime No.527 of 2021, registered at Police Station Yavatmal for the offences punishable under Sections 302 and 201 of the Indian Penal Code, the applicant is seeking for pre-arrest bail.

2. The learned counsel for the applicant primely submitted that there are only allegations of giving fist blows and therefore, at the most the offence punishable under Section 323 would attract. Moreover, it is submitted that deceased was drunk, and due to some ailment died after three days from the occurrence. The applicant has produced a Death Registration Certificate issued by Nagar Parishad showing that the

deceased died at his house due to illness. The State resisted bail by filing reply / affidavit. It is contended that the applicant has committed serious offence of murder and therefore, there is need of custodial interrogation.

4. Perused case diary and particularly Autopsy report. At the instance of report lodged by wife of deceased dated 18.06.2021, the crime was registered. It is alleged that on 12.06.2021, the applicant beaten deceased by means of fist blows and by rubber pipe at his stomach. There are statements of two eye witnesses who are in conformity on the point that deceased was beaten by fist blows. After occurrence deceased went to his house and died on 3rd day. The police recorded statement of one Medical Officer to whom the deceased visited on the following date and took medicines, as he was suffering from dysentery. Postmortem note discloses that there was no external injury and the final opinion was reserved.

5. It emerged that after death, the body was buried and as the report was lodged it was exhumed and postmortem was done. The overall allegations are of giving fist blows at the stomach of the deceased. Therefore, *prima facie* the submission about non-applicability of Section 302 of the I.P.C., carries substance. Nothing is to be seized at the instance of the applicant. There is no complaint that applicant has misused the liberty while enjoying interim protection.

7. In view of above, applicants liberty can be protected by directing him to join the course of investigation. Hence following order:

(i). Criminal Application is allowed.

(ii). Ad-interim order dated 17.07.2021 is hereby made absolute on same terms and conditions with a rider to continue to attend police station as ordered earlier, till the filing of charge-sheet.

JUDGE