

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

CRIMINAL APPLICATION (BA) NO.995 OF 2021

(Sagar s/o Baban Kulmate Vs. State of Maharashtra thr. PSO PS Hingna, Dist.
Nagpur)

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

Court's or Judge's orders.

Mr. G. Dani, Advocate for Applicant.
Mrs. K. R. Deshpande, APP for Non-Applciant/State.

CORAM: ROHIT B. DEO, J.

DATE: 29th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 53/2021 registered with the Hingna Police Station, District Nagpur for offence punishable under section 307 read with 34 of the Indian Penal Code. The crime is registered on the basis of report lodged by the injured Avinash Masram.

2. The applicant and co-accused Ganesh are the brothers-in-law of the injured. The wife of the injured had a tiff with the injured and left her matrimonial home and started residing at her parental home at Kanholi. The injured went to her wife's parental home at 04:30 p.m. on 11.02.2021 to meet his children. Some altercation ensued between the injured and his mother-in-law Shilpa. According to the injured, in order to avoid further unpleasantness he left the house of the in-laws, along with the elder child. The injured returned to the home of the

in-laws at 07:30 p.m. He was initially slapped and manhandled by Ganesh and then the applicant declared that he would kill the injured and dealt the injured several knife blows. The injured attempted to escape the assault. He was then held and restrained by Ganesh and again the applicant assaulted him with knife on the back and the waist.

3. According to the prosecution the knife which is used as weapon of offence is recovered pursuant to memorandum under section 27 of the Indian Evidence Act. The learned counsel for the applicant submits that the knife seized cannot be connected with the crime in the absence of blood stains. The learned APP Mrs. Deshpande points out that the knife recovered and seized was sent to the Medical Officer who has opined that the injuries could be caused due to the knife. At this stage, it would not be appropriate to make any decisive observation on the submission that in the absence of blood stains the knife cannot be connected with the crime. The submission is too simplistic. Absence of blood stains in itself is not necessarily conclusive or decisive. In any event, it would be appropriate to leave the finding to the trial court, to be recovered on the basis of the evidence adduced.

4. The assault is brutal as is apparent from the injury certificate. As many as six grievous injuries are caused and some are on the vital parts of the body. The submission of the learned counsel that the assault occurred due to sudden and grave provocation is noted only

for rejection. The fact that some hours prior to the assault the applicant had an altercation with his mother-in-law can, in no event, justify any assault much less a brutal assault with knife.

5. The learned counsel for the applicant points out that the witnesses have stated that it was the injured who was the aggressor. The estranged wife of the injured has stated that her husband was under the influence of liquor, that he was issuing threats of harming her physically, that her husband attempted to assault Ganesh and Sagar and an enraged Sagar, who is the applicant, went inside the kitchen, fetched a knife and then assaulted the injured.

6. Apart from the fact that the statement on which reliance is placed by the learned counsel for the applicant is of the estranged wife, she has clearly said that her brother assaulted the injured with knife. It is not even the version of the witnesses that the injured was armed or that he single handedly posed any credible threat to any person in the house much less to Ganesh or Sagar.

7. I am satisfied that no case for grant of bail is made out.

8. The application is dismissed.

JUDGE