

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

CRIMINAL APPLICATION (BA) NO. 1163 OF 2021

(Manjukumar s/o Mijaji Chawhan ..vs.. State of Maharashtra, through PSO, PS Saoner, District
Nagpur)

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

Court's or Judge's orders

Mr. C.B. Barve, Counsel for the applicant,
Mr. M.K. Pathan, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 01-12-2021

The applicant is seeking bail in connection with Crime 327/2020 registered with Saoner Police Station, District Nagpur for offences punishable under Sections 302 and 324 read with Section 34 of the Indian Penal Code (IPC).

2. Applicant Manjukumar Chawhan and deceased Shetkumar Rajput are neighbours. The applicant allegedly obstructed the way to the public toilet by erecting a fencing at the open space adjoining the house of Shetkumar Rajput.

3. The prosecution case is that at 5.15 p.m. on 28-6-2020 co-accused Sawankumar Rajput, who is the brother-in-law of the applicant got involved in an altercation with Shetkumar Rajput. Sawankumar Rajput allegedly had set up some sort of fencing on the road and when Mrs. Pooja, who is the wife of Shetkumar Rajput,

attempted to remove the fencing, it was the applicant Manjukumar Chawhan who came near Mrs. Pooja and slapped her. Shetkumar Rajput protested and some sort of scuffle ensued between him and the applicant. Co-accused Sawankumar Rajput allegedly assaulted Shetkumar Rajput with stick. At this stage, the fight was between Shetkumar Rajput and Sawankumar Rajput. According to the report lodged by Rahul Rajput, who is the brother of Shetkumar Rajput, while Sawankumar Rajput and Shetkumar Rajput were fighting, the applicant went home and came armed with a spear and plunged the same in the chest of Shetkumar Rajput, who succumbed to injuries suffered.

4. I have heard the learned Counsel Mr. C.B. Barve for the applicant and the learned Additional Public Prosecutor Mr. M.K. Pathan for the State, and after scrutinizing the record, I have found strong and cogent *prima facie* material to establish the allegations in the report.

5. While in all fairness, the learned Counsel Mr. C.B. Barve made no effort to create doubt as regards the occurrence of the incident in the manner alleged, Mr. C.B. Barve submitted that the offence at the highest shall fall under Section 304 of the IPC and Exception 4 to Section 300 of the IPC is clearly attracted.

6. Ordinarily, I would have refrained from considering the submission on the basis of the exception.

However, since the submission is the very substratum of the prayer for grant of bail, the same may be considered briefly.

7. Exception 4 to Section 300 of the IPC reads thus :

“Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

8. It is clear that apart from the fact that the culpable homicide must be committed without premeditation in a sudden fight, the act must have been done in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

9. Mr. C.B. Barve invites my attention to the decisions of the Apex Court in ***Sandhya Jadhav (Smt) vs. State of Maharashtra, (2006) 4 SCC 653; Gali Venkataiah vs. State of Andhra Pradesh, 2008 AIR (SC) 462*** and ***Sukhbir Singh vs. State of Haryana, 2002 AIR (SC) 1168*** to buttress the submission that the applicant is entitled to the benefit of the 4th Exception to Section 300 of the IPC.

10. It would not be necessary to make a definite observation on the submission. *Prima facie*, the

authorities on which the reliance is placed do not assist the applicant. I have already noted that when the applicant went home and came armed with spear which is plunged into the chest of the deceased, there was no fight ongoing between the applicant and the deceased. It was the co-accused who was fighting with the deceased. *Prima facie*, it cannot be said that the act of fetching spear from home and plunging the spear into the chest of the deceased is committed in a sudden fight or in the heat of passion. Moreover, I am satisfied that *prima facie* the applicant took undue advantage and acted in a cruel manner. As noted, although there was some scuffle initially between the applicant and the deceased since the applicant slapped the wife of the deceased, it was co-accused Sawankuar Rajput and the deceased who were involved in the fight. At that stage, it was wholly unnecessary for the applicant to fetch a deadly weapon and assault Shetkumar Rajput. The applicant took Shetkumar Rajput by surprise since the entire focus of Shetkumar Rajput must have been on his ongoing fight with co-accused Sawankumar Rajput.

11. Notably, in *Sandhya Jadhav (Smt) vs. State of Maharashtra*, the Apex Court has clarified that the expression “undue advantage” as used in the provision means “unfair advantage”.

12. In *Gali Venkataiah vs. State of Andhra Pradesh*, the Apex Court has emphasized that to bring a case

within Exception 4 of Section 300 of the IPC all the ingredients mentioned must be established and that the fight must have been with the person killed.

13. The enunciation in *Sukhbir Singh vs. State of Haryana* is of no assistance to the applicant since it is already noted that there was absolutely no fight ongoing between the applicant and the deceased when the act was committed.

14. The other submission of Mr. C.B. Barve is that a single blow was struck. It is well settled that the fact that a single blow is inflicted, is not decisive.

15. In *Virsa Singh vs. State of Punjab, AIR 1958 SC 465*, the Apex Court disagreed with the observation of Justice Beaman that ‘where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended.’ The Apex Court observes thus :

“16. The learned Counsel for the appellant referred us to Emperor v. Sardarkhan Jaridkhan, ILR 41 Bom. 27 at p.29: (AIR 1916 Bom. 191 at p.192) (B) where Beaman J., says that :

“where death is caused by a single blow, it is always much more difficult to be absolutely certain what degree of bodily injury the offender intended.”

With due respect to the learned Judge he has linked up the intent required with the

seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap. The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.”

16. In my considered view, at this stage, it cannot be assumed that the offence, if the material on record translates into admissible evidence, shall not fall under Section 302 of the IPC.

17. These observations are *prima facie* in nature and

shall not influence the learned trial Judge, during the course of trial.

18. I am satisfied that no case for exercise of discretion is made out.

19. The application is dismissed.

20. The trial Court is requested to expedite the trial.

21. If there is no significant progress in the trial in the next eight months, the applicant shall be at liberty to apply for bail afresh, before this Court. The liberty is subject to two conditions. The applicant shall bring this order to the notice of the learned trial Judge within the next ten days and the delay, if any, shall not be attributable to the accused.

JUDGE

adgokar