

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.671 OF 2022

Suraj s/o. Deepak Shinde

..Applicant

Vs.

The State of Maharashtra

..Respondent

Mr.S.J.Salunke, Advocate for applicant
Mr.S.P.Sonpavale, APP for respondent

**CORAM : R.G. AVACHAT, J.
DATE : JULY 25, 2022**

ORDER :-

This is an application under Section 439 of the Code of Criminal Procedure. The applicant has been arrested in connection with Crime No.0259 of 2021 registered with Tuljapur Police Station, Dist. Osmanabad.

2. Heard learned counsel appearing for the parties.

3. The FIR has been lodged on 29.07.2021 relating to the incident that took place on the very day. It is alleged in the FIR that the applicant herein assaulted deceased – Shankar Gaikwad with a knife in a godown. The FIR is not extensively referred to since it is lodged on the basis of the information received from someone else.

4. Learned counsel for the applicant would submit that the case falls within Exception 1 to Section 300 of Indian Penal Code. According to him, the mother of the applicant was said to had extra-marital relationship with the deceased. Same is the reason to cause the applicant grave and sudden provocation. He relies on Section 300 of Indian Penal Code, which reads thus:-

300. Murder — Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

.....

Exception 1.- When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:

First — That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly — That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly — That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation — Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2. -

According to learned counsel, the offence falls under either Part I or Part II of Section 304 of Indian Penal Code. The applicant is just 20 years of age. He, therefore, urged for grant of bail.

5. Learned APP would, on the other hand, submit that there is eye witness account. The deceased was assaulted in such a way that his intestine came out. He referred to the contents in the FIR, which reads thus :-

“.....शंकर यास पोटावर व छातीवर चाकूचे वार झाल्याने त्याचे आतडे बाहेर निघून रक्त स्राव होत होता.....”

He, ultimately, urged for rejection of the application for bail.

6. Considered the submissions advanced. Perused the police papers. There are two eye witnesses. I have gone through their statements. It is revealed from their statements that the incident took place in a godown. The applicant assaulted the deceased with a knife. The deceased suffered two injuries as under:-

(i) Stab injury on left side chest medial to left nipple 3.5 c.m.X 2 cm x 1 cm depth; and

(ii) Stab injury on abdomen, 2 cm. Above umbilicus, 6 c.m. x 2.5 c.m x 1 c.m. depth.

7. Learned counsel for the applicant concedes the applicant to have assaulted the deceased with a knife. His only case is that the offence falls within Exception 1 to Section 300 of I.P.C. Admittedly, when the incident took place, the mother of the applicant was not around. As such, there was nothing to indicate that the mother of the applicant and the deceased were in such a position that it would have given the applicant grave and sudden provocation to kill the deceased. Whether it is a case of grave and sudden provocation, in the facts and circumstances of the case, could only be ascertained during trial of the case. Considering the nature and the manner in which the offence is committed, the age of the applicant is irrelevant. The Court is, therefore, not inclined to grant bail to the applicant.

8. In the result, the application is rejected.

[R.G. AVACHAT, J.]