

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

921 BAIL APPLICATION NO.1351 OF 2021

Shakir Khan S/o Shakil Khan Pathan
Age: 28 years, Occu.: Labour,
R/o. In front of Jama Masjid Moglai,
Dist.Dhule.

..Applicant

VERSUS

The State of Maharashtra
Through Dhule City Police Station,
Tq. and Dist.Dhule.

..Respondent

...
Advocate for Applicant : Shri Shaikh Samir Ahmad Saifuddin
APP for Respondent : Shri S.B.Narwade

...
CORAM : M.G.SEWLIKAR, J.

DATE: 23rd February, 2022

PER COURT :-

1. Heard.

2. It is the prosecution's case that the applicant and the deceased had unnatural sex in the intervening night of 1st and 2nd April, 2021 in shrubs behind Agricultural College, Dhule. The deceased again demanded unnatural sex from the applicant to which the applicant refused. The deceased was forcing the applicant to let the deceased satisfy his unnatural lust. Therefore, the applicant fished out a knife and stabbed in the abdomen of the deceased as a result of which the deceased died.

3. FIR was lodged against an unknown person. On the basis of CCTV footage, the applicant was apprehended. He gave the memorandum statement under Section 27 of the Evidence Act on the basis of which knife was recovered at the instance of the applicant. The knife had blood stains. During the search of the house of the applicant, the clothes of the applicant having blood stains came to be recovered. Accordingly, crime came to be registered against the applicant under Section 302 of the Indian Penal Code.

4. Shri S.B.Narwade, learned APP for the respondent-State submits that in the CCTV footage it is seen that there was a scuffle between the applicant and the deceased. CCTV footage further shows that the applicant was seen running towards New Laxmi Kulfi Shop with a footwear in his hand. Learned APP further submits that tower locations of the applicant and the deceased were the same at the time of the incident. He submits that all these things clearly show the involvement of the applicant in the offence.

5. Charge-sheet is filed. The motive behind the crime appears to be that the deceased was demanding unnatural sex

from the applicant. The applicant was resisting it. When the deceased was insistent upon it, applicant stabbed the deceased. Everyone has a right of private defence to protect his body and property. In case of assault with the intention of gratifying of unnatural lust, Section 100 of the Indian Penal Code deals with this aspect of the matter. Section 100 of the Indian Penal Code reads thus :

“100. When the right of private defence of the body extends to causing death.—*The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—*

First — Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly — Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly— An assault with the intention of committing rape;

Fourthly —An assault with the intention of gratifying unnatural lust;

Fifthly — An assault with the intention of kidnapping or abducting;

Sixthly — An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

Seventhly - An Act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause

the apprehension that grievous hurt will otherwise be the consequence of such act."

6. Case of the prosecution squarely falls in Clause fourthly. In the case at hand, the deceased was forcing the applicant to have unnatural sex with him. The applicant was resisting it. Medical report shows that applicant was examined by the Medical Officer and the Medical Officer has opined that unnatural sex cannot be ruled out. Clause fourthly shows that the right of private defence of the body extends to the voluntary causing of the death, if the offence which occasions the exercise of the right relates to with the assault of gratifying unnatural lust. The applicant exercised his right of private defence. During the trial only it will be clear whether applicant exceeded his right or private defence or not. Therefore, I am inclined to release the applicant on bail. Hence, the order :-

ORDER

- i) Bail Application is allowed.
- ii) Applicant be released on P.R.Bond of Rs.25,000/- (Rs. Twenty-five thousand only) with one solvent surety in the like amount, in connection with Crime No.81 of 2021, registered with Dhule City Police Station, Dist.Dhule, under Sections 302 of the Indian Penal Code and on condition that he shall not tamper the prosecution evidence.
- iii) Bail Application is disposed of.

iv) It is clarified that the observations made in this order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M.G.SEWLIKAR)
JUDGE

SPT