

...Applicant

...Respondent

Mr. Satyavrat Joshi i/b Mr. Nilesh Mohite for the Applicant.
Ms. P. P. Shinde, APP for the State.

DATED : 10 NOVEMBER 2022

This is an application under Section 439 of Code of Criminal Procedure.

4. Perusal of the charge-sheet and more particularly the dying

declaration of the deceased reveals that on the day of incident, which took place on 11.02.2021, the deceased Samadhan Kolekar was trying to resolve the quarrel which was going on between co-accused Daji Kolekar and one Sudhir Kolekar and at that time the present applicant assaulted the deceased by knife.

5. The learned counsel for the applicant submits that even if the case of the prosecution is accepted as it is, still it would not constitute the offence punishable under Section 302 of Indian Penal Code. It is submitted that there was no intent to kill the deceased. He submits that it is the case of single injury and the deceased died after 23 days of the alleged incident due to septicemia. It is submitted that the investigation is over and therefore further detention of applicant is not warranted. Accordingly submitted that the applicant may be released on bail.

6. On the other hand the learned APP submits that the applicant is involved in serious offence of murder. It is submitted that the present applicant assaulted the deceased by knife when he was trying to resolve the quarrel which was going on between co-accused Daji Kolekar and Sudhir Kolekar. It is submitted that considering the nature of offence the applicant may not be released on bail.

7. According to the dying declaration the present applicant assaulted the deceased by knife. Initially, the applicant was not there and co-accused Daji Kolekar had called him at the place of incident in view of his altercation with Sudhir Kolekar. The fact that when the present applicant came to the place of incident, he was carrying knife cannot be ignored at this state. The applicant assaulted the deceased who was trying to resolve the quarrel between Daji Kolekar and Sudhir Kolekar.

8. Considering these facts and circumstances, I am not inclined to release the applicant on bail.

9. Application is rejected.

10. Needless to state that observations are prima facie and will have no bearing on trial.

(N.R. BORKAR, J.)