

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

CRIMINAL APPLICATION (BA) NO.321 OF 2022

Nilesh s/o Purushottam Dhoke

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Warora,
District Chandrapur

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

Court's or Judge's orders

Mr. A. C. Jaltare, Advocate for applicant.
Mrs. Mayuri Deshmukh, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 29/04/2022

Heard Mr. Jaltare, learned counsel for the applicant and Mrs. Deshmukh, learned APP for non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Section 302 of the Indian Penal Code in Crime No.389 of 2021. The incident is dated 13.05.2021. The applicant has been arrested on 14.05.2021 and the charge-sheet is filed on 06.08.2021.

3. Mr. Jaltare, learned counsel for the applicant submits, that the turn of event would indicate, that there was no premeditation and no intention of the applicant to commit any crime. He submits, that because of sudden altercation, which developed on the spot due to the deceased uttering derogatory remarks regarding the

mother of the applicant, that in a sudden fit of anger, the applicant has committed the crime. There is a single blow. The conduct of the applicant, in taking the deceased after the assault to the hospital would also indicate, that there was no intention whatsoever, in view of which, the applicant would be entitled to bail.

4. Mrs. Deshmukh, learned APP for non-applicant/State opposes the application and submits that there are multiple eyewitnesses to the incident, who have seen the applicant, assaulting the deceased by a knife on the neck, which is the cause of the death, and therefore, application needs to be rejected.

5. The applicant and the deceased Sukharam, were good friends. The applicant was having affair with one Babli @ Ambika Kishor Kinnake, who was working in Sagar Collection, Gandhi Square, Warora, whenever the applicant used to meet her, invariably Sukharam, the deceased also used to accompany the applicant i.e. how he became known to Babli. It is stated, that on 12.06.2021, Sukharam had called up Babli and badmouthed the applicant stating that he was not a good person and so also made derogatory statement about the mother of the applicant. This was told by Babli to the applicant on 13.05.2021 at about 4.30 in the afternoon, the applicant had come to the house of Babli and told her that the deceased was at Gandhi Square and she should

accompany him to sort out the issue, as result of which, she sat on his motorcycle and went with him at Gandhi Square. The applicant stopped the motorcycle at some distance where Sukharam was sitting and went to Sukharam where they had a discussion. After some time, the applicant called Babli there, whereupon Babli heard the applicant questioning Sukharam, as to why he was badmouthing his mother. The fight escalated and it appears that, in a fit of anger, the applicant took out a knife from his pocket and assaulted Sukharam on his neck, as a result of which, blood erupted (page 117). Thereafter, immediately, the applicant has expressed his remorse and has taken the deceased to the hospital [statement of Tausif (page 123) and Faiyaz (page 124)]. Though, the deceased was taken to the hospital, however he was pronounced dead on arrival. No doubt, that there are as many as six eyewitnesses including Babli, however, it appears that there was no premeditation or any intention as is apparent from the record. The fight has developed as an altercation between the applicant on account of the deceased badmouthing the mother of the applicant, which has escalated and in a fit of anger, it appears that the applicant has taken out the knife and assaulted the deceased. The fact that there is a single blow may indicate, that perhaps the matter may fall under Section 304 part II of the Indian Penal Code, however, this is only a *prima facie* view for the purpose of deciding this application for bail and does not reflect any

observations on merits. The act of the applicant of taking the deceased after the assault to the hospital, would be indicative in itself. The charge-sheet has already been filed on 06.08.2021. Considering the above circumstances, the further incarceration of the applicant may not be justifiable and would not serve any purpose. Hence, the following order.

ORDER

(i) The applicant be released on bail in Crime No.389 of 2021 for the offence punishable under Section 302 of the Indian Penal Code, on his executing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with two solvent sureties of the like amount.

(ii) The applicant shall not, directly or indirectly make any attempt to influence the witnesses or otherwise tamper with the evidence.

(iii) During the course of the trial the applicant shall reside outside the boundary limit of Warora town except on the dates when the applicant is required to attend the learned Sessions Court.

(iv) The applicant shall also intimate his residence and mobile number to the police authorities as well as the learned Sessions Court and the current residential address and mobile number would always be informed to the police authority and learned Sessions Court.

(v) Violation of any of these conditions shall result in cancellation of bail.

JUDGE