

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

Criminal Application (BA) No. 1188 of 2022

Nitesh Shankarrao Sonwane

Versus

State of Maharashtra, through Police Station Officer, Police Station
Hudkeshwar, Nagpur City, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Sandip Tatke, Advocate h/f Shri M.V.Acharya,
Advocate for the applicant.

Shri S.D.Sirpurkar, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 22nd NOVEMBER, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 0208 of 2022 registered with Police Station Hudkeshwar, Nagpur City for the offence punishable under Sections 302 and 325 of Indian Penal Code.

2. As per the case of the prosecution, the deceased is real brother of the wife of the applicant who on the date of incident was under the influence of liquor and he took out a quarrel with the wife of the applicant on the ground of getting the house from her, vacated. Thereupon, the applicant who was in the

house playing with his daughter, hearing the noise came down from the first floor and went to rescue his wife and during the said incident the deceased took a spade and tried to attack the applicant. In that scuffle, the alleged incident took place and it is the case of the applicant that in defence the applicant gave blow by spade and the deceased succumb to the injuries. It has come on record that applicant himself went to the police station and reported the incident.

3. In this case the chargesheet is filed after completion of the investigation. The witnesses who had witnessed the quarrel stated that deceased tried to assault and attack the applicant by spade.

4. Thus, considering the over all circumstances in which the alleged incident took place, *prima facie*, it appears that out of provocation and instigation of the deceased, the said incident took place and there was no intention of the applicant to kill the deceased.

5. In this case the applicant is in jail from 31st March, 2022 and the investigation is completed.

6. In that view of the matter and the material available on record, I am of the opinion that as the incident took place because of provocation by the deceased and as *prima facie* there was no intention to

commit murder, the applicant is entitled for grant of bail. Accordingly, I pass the following order.

- i. The criminal application is allowed.
- ii. It is directed that the applicant shall be released on bail in Crime No. 0208 of 2022 registered with Police Station Hudkeshwar, Nagpur City for the offence punishable under Sections 302 and 325 of Indian Penal Code, on furnishing P.R.Bond of Rs.25,000/- with one solvent surety in the like amount;
- iii. The applicant shall attend the concerned Police Station as and when his presence is required;
- iv. The applicant shall not tamper with the prosecution witnesses;
- v. The applicant shall not leave the jurisdiction of the concerned Police Station without permission of the Court.

[ANIL S. KILOR, J.]

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by
SACHINDANAND
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Date: 2022.11.23
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