

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

Criminal Application (BA) No. 1320 of 2022

Sami S/o Hiralal Soni

Versus

The State of Maharashtra, through its Police Station Officer, Police Station
Kapilnagar, Dist. Nagpur

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

Court's or Judge's Order

Shri Tejas Deshpande, Advocate for the applicant.

Ms. Shamsi Haider, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 13th DECEMBER, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 128 of 2022 registered with Police Station Kapilnagar, Dist. Nagpur for the offence punishable under Sections 302, 201 read with Section 34 of Indian Penal Code.

2. Learned counsel for the applicant tried to take advantage of summary submitted by the Investigating Officer while submitting the chargesheet and thereby he tried to canvas that there are no allegations against the present applicant that he has strangled the deceased whereas, such are the

allegations against the accused no.2 who is the wife of the applicant.

3. He further submits that in the circumstances at the most the offence under Section 201 of Indian Penal Code will attract against the applicant and for the same the maximum punishment is seven years.

4. He further submits that the applicant is in jail from March, 2022 and thus considering the period of incarceration and the role attributed to him, he may be released on bail.

5. On the other hand, learned Additional Public Prosecutor strongly opposed the present application and submits that there is ample evidence available on record to show that the applicant along with his wife committed murder of the deceased and they packed the dead body in a box of washing machine and they disposed of by taking in a rickshaw and throwing it near SDPL Society, Uppalwadi. Accordingly, she prays for rejection of the present application.

6. I have perused the chargesheet and the summary prepared by the Investigating Office, while submitting the chargesheet.

7. The summary to the charge sheet discloses the gist of the offence but it is not sufficient to arrive at a conclusion which particular offence will attract against which particular accused, when the whole case is based on circumstantial evidence and there is no direct evidence or eye witness to the incident.

8. In the circumstances, it is not safe to rely upon such summary to arrive at a conclusion in this case that at the most the offence under Section 201 of Indian Penal Code will attract against the applicant and not the offence under Section 302 of Indian Penal Code.

9. Considering the material and evidence collected by the Investigating Officer during the investigation, *prima facie*, I am of the opinion that there is sufficient material against the applicant. Moreover, the offence is serious, hence, I am not inclined to grant bail. Accordingly, it is rejected.

[ANIL S. KILOR, J.]

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