

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.301 OF 2023

(Shivshankar s/o Gangaram Nikure (Nikode) Vs. State of Maharashtra)

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

Court's or Judge's Order

Shri P.H. Khobragade, Advocate for the applicant.
Shri M.J. Khan, APP for State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 28, 2023.

Heard.

2. Present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.418/2022 registered at police station M.I.D.C. Butibori, Nagpur Rural for the offence punishable under Section 302 of the Indian Penal Code.

3. The crime is registered on the basis of report lodged by Vaishali Subhashrao Kokude who is the daughter of the deceased.

4. As per the recitals of the First Information Report, on 02/11/2022 at about 6.30 p.m. when she was at home, her father i.e. the present applicant came at home under the influence of liquor and was demanding money from his mother. There was quarrel between them and the present applicant gave a blow of axe on her neck. She sustained grievous injuries. Initially, the crime was

registered under Section 307 of the Indian Penal Code. After four days, she succumbed to the injuries. The offence is converted under Section 302 of the Indian Penal Code.

5. As per the contention of the applicant that he is 61 years old. He is falsely implicated in the alleged crime.

6. Now the investigation is completed and the charge-sheet is filed. No purpose will be served by keeping him behind bar, and therefore, he be released on bail.

7. Said application is strongly opposed by the State on the ground that the present applicant gave blow of axe on the vital part of the body. Thus, the blow was given with intention to cause the death.

8. Considering the *prima facie* case against the present applicant, the application deserves to be rejected.

9. Heard learned Counsel for the applicant. He reiterated the contention and submitted that now the investigation is completed and the charge-sheet is filed. No purpose will be served by keeping the present applicant behind bar. He further submitted that the deceased has sustained the injury which was in the nature of lacerated injury 3cm x 1/2cm but due to old age she succumbed to the said injury.

10. Considering the same, it can be ascertained that the intention of the applicant was not caused to the death. He further submitted that considering all the witnesses are the family members and there is apprehension that he will tamper the prosecution evidence. Hence, bail application deserves to be allowed.

11. Said application is strongly opposed by the State on the ground that there is apprehension that if applicant is released on bail he will tamper the prosecution evidence. Learned Additional Public Prosecutor invited my attention towards the post-mortem report and submitted that the injury sustained by the deceased was 13 cm below left mastoid, directed horizontally, which shows the contention of the present applicant regarding the intention to cause the death. He submitted that if the applicant/accused is released on bail and considering all witnesses are the family members, there is every possibility that he will tamper the prosecution evidence.

12. Having heard both the sides and on perusal of the charge-sheet, there is a direct evidence against the present applicant in the nature of the eye-witnesses who are the family members.

13. The deceased was 77 years old whose death was caused by her own son by giving blow on the vital part of the body. The apprehension raised by the prosecution is to be considered, in the light that all the

eye-witness are the family members and possibility of tampering the witnesses cannot be ruled out.

14. For the reasons recorded above, this is not a fit case to grant bail. Hence, application deserves to be rejected.

15. The application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)

**Divya*