



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

CRIMINAL APPLICATION (BA) NO.969 OF 2024

(Sharad s/o Madhav Wankar 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

Mr. M.P. Ladhe, Advocate a/w Mr. S.A. Shrivastava, Advocate for the
applicant.
Mr. S.V. Narale, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 26, 2024.

By this application, the applicant is seeking bail as he came to be arrested on 26/09/2023 in connection with Crime No.264/2023 registered with Police Station Chamorshi, District Gadchiroli for the offence punishable under Sections 302 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Bharat Lahanu Urade who is the son of the deceased on an allegation that on 23/07/2023 he had been at his house at the relevant time, he received a phone call of one Sandip Ghongade who disclosed that his father was assaulted by the present applicant Sharad Wankar by means of stick on his head. Immediately, he rushed to the spot of incident and found his father lying the pool of blood. He immediately rushed him to the hospital; however, he was declared dead. It is further alleged that there was previous dispute between the family members of the deceased and the present applicant. On the basis of

the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that there is inter relationship between the present applicant and the deceased and there was a matrimonial dispute between the applicant and his wife and on that count also there was a dispute between the deceased and the present applicant as wife of the applicant was related to the deceased. He further submitted that the applicant has also sustained the injury which is not explained by the prosecution in the entire investigation papers. He submitted that as the applicant was lying under the tree, at that time, deceased came there and during the altercation of words, there was a scuffle between them and while exercising the right of private defence, the injury was caused to the deceased and he succumbed to the death. He submitted that there was no intention, at the most, knowledge can be attributed to the present applicant, and therefore, at the most the offence would cover under Part II of Section 304 of the Indian Penal Code. He submitted that, now investigation is completed. Since one and half year the applicant is behind bar. Considering all these aspects, the applicant be released on bail.

4. Learned APP strongly opposed the said application and submitted that the applicant is known as 'Gunda' in the vicinity. The statements of the witnesses

and even the child witnesses disclosed his identity and the nature and there are criminal antecedents against him. He submitted that considering the manner in which deceased was assaulted, the deceased has sustained the head injury which resulted into his death. If applicant is released on bail, he would tamper the prosecution evidence and there is every possibility of committing the similar type of the offence. Hence, the application deserves to be rejected.

5. I have heard learned Counsel for both the sides. Perused the investigation papers from which it reveals that admittedly, there is no eye-witness to the incident. The Investigating Officer has also collected the Injury Certificate of the present applicant also which shows that present applicant has also sustained the grievous injury in the said incident. On the same day, he was examined and the medical certificate shows that he was assaulted by somebody, and therefore, he has sustained the injuries. At the spot of incident also, two sticks were found. One was half broken and another stick with the blood stains. The postmortem report shows that the deceased has sustained one injury i.e. on the head which resulted into his death. Considering all these aspects, there is some substance in the contention of the learned Counsel that there was altercation of the words between two and in the scuffle they have caused injuries to each other. Even considering the allegation levelled against the present applicant it appears that only one injury is sustained by the deceased i.e. puncture wound of

size 3cm x 3cm x 3cm deep. It is apparent that the applicant has not extended or committed any overt act while assaulting the deceased. Thus, at the most it can be seen that during the scuffle the injuries are caused and there was no intention but there was a knowledge to the present applicant. At this stage, whether there was a right of private defence or not cannot be ascertained, it is a matter of evidence. Considering the investigation is already completed and the circumstances under which the alleged incident has taken place, the applicant has made out a case for grant of bail. At the same time, considering the apprehension raised by the learned APP some conditions requires to be imposed on the applicant.

6. Learned APP informed that there are criminal antecedents against the present applicant. Merely because there are criminal antecedents is not sufficient ground to reject the bail application of the applicant. For all above these grounds, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Sharad s/o Madhav Wankar in connection with Crime No.264/2023 registered with Police Station Chamorshi, District Gadchiroli for the offence punishable under Sections 302 of the Indian Penal Code, be released on bail on executing

PR. bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of village Sonapur, Tq. Chamorshi, District Gadchiroli, till culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case either personally or by way of electronic media.

(v) The applicant shall furnish his detail address where he is intending to reside after releasing him on bail along with mobile number, before the Investigating Officer.

(vi) The applicant shall not indulge himself in similar type of the activities.

(vii) The applicant shall attend the proceedings before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(viii) The contravention of any of the condition would lead to the cancellation of bail.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)