



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

CRIMINAL APPLICATION (BA) NO.1161 OF 2023

(Yogesh Santosh Borkar 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.N. Ali, Advocate for the applicant.
Mr. S.S. Hulke, APP for the State.
Mr. R.S. Kurekar, Advocate for Assist to Prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- FEBRUARY 1, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 30/06/2023 in connection with Crime No.304/2023 registered with Police Station Washim Rural, Washim for the offence punishable under Section 302 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of report lodged by Amol Subhash Aru who alleged that the deceased was his brother and there was a previous dispute between him and the present applicant on account of the flowing of the water from the agricultural field of the complainant to the field of the present applicant. He further alleged that initially there was canal to flow the water which was closed by the present applicant, and thereafter the rain water started flowing from his agricultural field to the agricultural field of the present applicant and there used to be quarrel between them on

that count. On 30/06/2023, he received the message that his brother is admitted in the hospital as he has sustained the injuries, therefore, he rushed to the hospital and his brother disclosed that when he was standing on the Adhal Nagar road, the present applicant came there and started quarrelling with him on account of flowing of the water in his agricultural field and gave a blow of knife on his stomach, due to which he sustained the injuries. During the treatment, the deceased succumbed to the death. On the basis of report, police have registered the crime.

3. Learned Counsel for the applicant submitted that as far as the injury is concerned which is caused during the sudden fight and sudden quarrel between the present applicant and the deceased.

4. The applicant had not carried any weapon along with him. He has took out the knife as per the allegation which was lying there and gave a blow on the abdomen. Thus, there was no intention to commit the murder, whatever happened is in the sudden fight and sudden quarrel. There was no intention to kill the deceased. Now, investigation is completed and charge-sheet is filed. In support of his contention, he placed reliance on the order passed by this Court in Criminal Application No.379/2014 and Criminal Application No.549/2015 and submitted that wherein in the similar circumstances, the applicants are released on bail.

5. Learned Additional Public Prosecutor strongly opposed the application with contention that the intention of the present applicant can be gathered from the circumstance i.e. the force used by the present applicant while giving the blow. Mere single injury is not sufficient to infer that the applicant has given a blow without any intention. Though investigation is completed and charge-sheet is filed, considering the role attributed to the present applicant, the application deserves to be rejected.

6. Learned Counsel for the informant has also endorsed the same contentions and submitted that there was a previous dispute between the applicant and the family of the deceased. The deceased was assaulted with an intention to commit his murder. If applicant/accused is released on bail he will tamper with the prosecution evidence. In view of that, bail application deserves to be rejected.

7. Having heard learned Counsel for the parties. Perused the investigation papers. As far as the submission of the learned Counsel is concerned which shows that at the most the act of the present applicant covers under Section 304 Part II of the Indian Penal Code as whatever happened in a spur of moment. It is well settled that mere single injury is not sufficient to infer that the offence covers under Section 304 Part I and 304 Part II of the IPC, whether it was a culpable homicide amounting to murder or not amounting to murder depends upon the various

circumstances like the weapon used by the accused, the part chosen by the accused for the assault and the force used by the accused. In the present case, there is no dispute that there was a previous quarrel between the present applicant and the family members of the deceased.

8. The recitals of the FIR shows that initially there was a canal for flowing of the rainy water which was closed by the present applicant, and therefore, rainy water started flowing from agricultural field of deceased to the agricultural field of the present applicant and there used to be quarrel between them on that count. The nature of the incident shows that on 30/06/2023 when the deceased was standing on Adhal Nagar road, at that time present applicant came there, approached to him and started quarrelling with him on account of flowing of the water from the agricultural field of the deceased to his agricultural field. The statement of the eye-witness also shows that when the deceased was standing along with his motorcycle in his courtyard at that time present applicant came there on his motorcycle and started communicating with him and also started quarrelling with him. In the said incident, there was manhandling by them to each other. At that time, present applicant has took out the knife from the courtyard of his house from the other utensils and gave a blow on the abdomen of the deceased. The postmortem report shows that the deceased has sustained cut wound left side, upper and medial margin.

The internal injury sustained by the deceased and stab wound present over left side abdomen haematoma present surrounding with corresponding injury, multiple punctured wound were present over anterior and inferior surface of stomach total in 6 number. The stab wound entered upto the portion of the kidney. Thus, these injuries explained the force used by the present applicant while giving the blow and the portion of the body of the deceased chosen was a vital portion. Thus, the intention can be gathered from the circumstances, at this stage, there is a *prima facie* material against the present applicant. In view of that, the application deserves to be rejected.

9. Hence, the application is rejected accordingly

(URMILA JOSHI-PHALKE, J.)

**Divya*