

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 209 OF 2019

Mangalabai Suresh Kumawat,
Age 53 years, Occu. Household,
R/o. Plot No. 9, Sumangal Niwas,
Near Vedant Nagar, Modi Nagar,
Vitkheda, Paithan Road, Aurangabad,
Dist. Aurangabad.

....Petitioner.

Versus

1. The State of Maharashtra
2. Superintendent of Police,
Jalgaon.
3. Police Inspector,
City Police Station, Amalner,
Dist. Jalgaon.
4. Madhuri Yogesh Kumawat,
Age Major, Occu. Nil,
5. Amruta Balwant Udewal,
Age Major, Occu. Nil,
6. Balwant Shrikisan Udewal,
Age Major, Occu. Nil,
7. Nandini Balwant Udewal,
Age Major, Occu. Nil,
8. Girish Tulshiram Udewal,
Age Major, Occu. Nil,

No. 4 to 8 R/o. New 36 Rooms,
Near Mundada Nagar, Amalner,
Tq. Amalner, Dist. Jalgaon.

9. Mahesh @ Bapu Mohan Kumawat,
Age Major, Occu. Nil,
10. Renuka Mahesh Kumawat,

Age Major, Occu. Nil,

No. 8 & 9 R/o. Near Harsul Power
Station, Lane No. 5, Aurangabad,
Dist. Aurangabad.

....Respondents.

Mr. G.V. Wani, Advocate for petitioner.

Mr. M.M. Nerlikar, APP for respondent Nos.1 to 3.

**CORAM : T.V. NALAWADE AND
MANGESH S. PATIL, JJ.**

DATED : 08/04/2019.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) Deceased Yogesh was the son of present petitioner. The marriage between deceased Yogesh and one Madhuri had taken place on 2.7.2018. There was a suspicion in the mind of Yogesh against the wife that she had an affair with somebody as she was talking continuously on mobile handset. Then she left the matrimonial house and went to parents house and she was living with the parents. On 26.9.2018 she called Yogesh and asked him to come with cash of Rs.2,00,000/- and she informed that the boy with whom she had an affair wanted to settle the matter and so Yogesh should come immediately. This information was passed by Yogesh to petitioner Mangalabai, mother of the deceased. He left for the place

of his wife on that day. To confirm as to whether Yogesh has reached the house of parents of his wife, the petitioner gave a call. The call was taken by one Amruta and she said that they would not allow Yogesh to return alive from their house. According to the petitioner, at about 1.30 a.m. her son Mahesh received a call that Yogesh had fired two bullets at the wife and he had fired bullet at himself to commit the suicide. After that they rushed to the spot. Yogesh was already admitted in Seva Hospital, Dhule and he was unconscious. He died due to injuries on 7.10.2018.

3) This Court has carefully gone through the P.M. report. The wife of Yogesh subsequently gave F.I.R. against Yogesh that he attempted to murder her by making the blast of battery of mobile phone and crime for the offence punishable under section 307 etc. of I.P.C. came to be registered on the basis of her report. To ascertain as to whether Yogesh had sustained any injury, this Court has gone through the P.M. report and also the spot panchanama. On one hand, the wife of Yogesh sustained minor injuries, even when her case is that Yogesh attempted to murder her, but, Yogesh sustained serious injuries, cut injuries, many injuries on head and on front portion of the head. No foreign body was detected in the injuries and death took place due to the head injury.

4) When admittedly the incident took place inside the room where Yogesh and his wife were present, the burden is on the wife of Yogesh to explain the things. Apparently, there is no plausible explanation from the wife of Yogesh at present in respect of the serious injuries sustained by Yogesh and the injuries which were sustained by the wife do not appear to be that serious. These circumstances ought to have been considered by the investigating agency, but they have not considered this circumstance and they showed promptness in accepting the version given by the wife of Yogesh and they registered the crime on 20.11.2018 for offence punishable under section 307 of I.P.C. The petitioner had already given report suspecting murder of her son on 10.10.2018, but no cognizance of that matter was taken even when there are aforesaid circumstances. In such a case, when only the wife of Yogesh and her relatives can explain the things, the crime ought to have been registered on the basis of report given by mother of Yogesh. In view of the case reported as **(2014) 2 SCC 1 [Lalita Kumari Vs. Govt. of U.P.]**, this Court holds that the crime needs to be registered on the basis of report given by petitioner.

5) Though in the petition, so many names are given as suspects and they are made respondents by the mother of Yogesh, it is up to the police to find out as to who must have been involved or

who is probably involved in the incident. First suspect in the matter can be respondent No. 4, wife of the deceased and from that angle, the investigation needs to be made by police and investigating agency is expected to collect the record like photographs, conversation record etc. which the petitioner is having. So, the following order.

O R D E R

The petition is allowed. Direction is hereby given to respondent No. 3 to register the crime for offence punishable under section 302 of I.P.C. and other provisions like section 34 can also be used by police on the basis of report given by petitioner dated 10.10.2018.

Rule is made absolute in those terms.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]

ssc/