

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

CRIMINAL APPLICATION NO. 3876 OF 2018

Priyanka w/o. Mangesh Kote,
Age 22 years, Occu. Household,
R/o. Sakori Shiv, Shirdi,
Taluka Rahata,
District Ahmednagar.

....Applicant.

Versus

1. The State of Maharashtra
(Through Rahata Police
Station District Ahmednagar)
2. Prakash s/o. Asaram Nidhane,
Age 45 years, Occu. Agri.,
R/o. In front of Civil Hospital,
Rahata, Tq. Rahata
District Ahmednagar.

....Respondents.

Mr. N.S. Ghanekar, Advocate for applicant.

Mrs. V.S. Choudhari, APP for respondent No.1/State.

Mr. A.N. Patil Barhate, Advocate for respondent No. 2.

**WITH
CRIMINAL APPLICATION NO. 9 OF 2019**

Kusum w/o. Vijay Sadafal,
Age 48 years, Occu. Household,
R/o. Rahata, Taluka Rahata,
District Ahmednagar.

....Applicant.

Versus

1. The State of Maharashtra
(Through Rahata Police
Station District Ahmednagar)
2. Prakash s/o. Asaram Nidhane,

Age 45 years, Occu. Agri.,
R/o. In front of Civil Hospital,
Rahata, Tq. Rahata
District Ahmednagar.

....Respondents.

Mr. N.S. Ghanekar, Advocate for applicant.

Mrs. V.S. Choudhari, APP for respondent No.1/State.

Mr. A.N. Patil Barhate, Advocate for respondent No. 2.

**CORAM : T.V. NALAWADE AND
K.K. SONAWANE, JJ.**

DATED : 13/06/2019.

JUDGMENT : [PER T.V. NALAWADE, J.]

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

2) Both the proceedings are filed for quashing of proceeding of Sessions Case No. 23/2018 which is pending in Sessions Court, Kopergaon, District Ahmednagar. The case is filed for offences punishable under sections 302, 34 and 201 etc. of Indian Penal Code (hereinafter referred to as 'IPC' for short) and it is filed in C.R. No. 52/2018 registered with Rahata Police Station, District Ahmednagar. The proceeding No. 3876/2018 is filed by one Priyanka Mangesh Kote and other proceeding is filed by Smt. Kusum Vijay Sadafal. Kusum is mother of Priyanka. Husband of Priyanka is shown as one accused in the case, but he is not before this Court. Deceased Ramdas was brother of first informant Prakash Nidhane. The incident in question took place on 13.4.2018. Ramdas left home prior to

12.00 noon of that day. He had called the first informant on phone at 12.45 p.m. At 4.30 p.m. the uncle of first informant Sahebrao informed on phone to him that dead body of Ramdas was lying in front of Hotel Shivneri situated at Chitali Road. First informant Prakash rushed to the spot. He noticed that there were injuries on the dead body. He gave report to police on 14.4.2018 against unknown persons that they had assaulted the deceased and by strangulating him, they had committed his murder.

3) This Court has carefully gone through the record of investigation which include the spot panchanama. The dead body was lying in the vicinity of Shivneri Hotel. On 13.4.2018 one Balasaheb alias Ashok Sadafal had visited this hotel at 4.00 p.m. He had seen the owner of the hotel viz. Smt. Kusum on the counter. The dead body of Ramdas was lying inside of the hotel and Kusum had asked Balasaheb as to whether he knew Ramdas. He told Kusum that he knew Ramdas and then he went outside of the hotel to contact the relatives of Ramdas like Sahebrao Nidhane. In the meantime, the waiters of the hotel brought the dead body out of the hotel and threw it near the heap of stones lying near the hotel. Such statement was recorded on 15.4.2018. Thus, apparently the murder of Ramdas was committed inside of the hotel. No information was given by the owner of the hotel Smt. Kusum to police about the dead body and an attempt was made to create a show that the owner of the hotel had

no concern with the dead body by throwing the dead body outside the hotel.

4) The submissions made and the record show that there was information to police that husband of Priyanka, Mangesh had removed the hard disc from the system of C.C.T.V. camera in which the incident was probably recorded. C.C.T.V. cameras were fixed in aforesaid hotel, but Mangesh took out that disc and handed it over to other accused working in the hotel. However, the said hard disc is not recovered by the police. It appears that Priyanka was cohabiting with Mangesh and father of Mangesh was also living in the same house. During visit of the police to the said house, Priyanka was present in the vicinity and also when the lock of the door was opened and search of the house was taken. However, nothing incriminating was recovered from that house and only the C.C.T.V. system was recovered.

5) The entire material collected by police does not show that anybody had seen Priyanka in the hotel on that day. It is not the case of prosecution that Priyanka was helping her mother in running the business of the hotel. Thus, there is material of aforesaid nature like presence of Priyanka in the house of Mangesh and on that basis chargesheet is filed against her. It will be abuse of

process of law if Priyanka is asked to face the trial for such serious offence on the basis of aforesaid material.

6) In the result, Criminal Application No. 3876/2018 is allowed. Relief is granted in terms of prayer clause 'B' to the extent of Priyanka Mangesh Kote only. Rule is made absolute in aforesaid terms.

7) As the learned counsel for Smt. Kusum submitted that he wants to withdraw the proceeding as the Court was not inclined to grant relief to Smt. Kusum. The proceeding filed by Smt. Kusum bearing Criminal Application No. 9/2019 is disposed of as withdrawn. Rule is discharged in that proceeding.

[K.K. SONAWANE, J.]

[T.V. NALAWADE, J.]

ssc/