

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 478 OF 2021

Vaishali w/o Sheshrao Mane	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. Satej S. Jadhav, Advocate for the applicant
Mr. S. N. Morampalle, APP for the respondent-State

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CORAM : R. G. AVACHAT, J.

DATED : 24th JUNE, 2021

PER COURT :-

. Heard.

2. The challenge in this application is to the order dated 03.02.2021, passed by the learned Additional Sessions Judge-2, Nanded, below application Exh.66 in Sessions Case No. 137 of 2018. By the impugned order, the application preferred by the appellant/accused for her discharge from the case, has been rejected. Hence this application.

3. Shri Satej S. Jadhav, learned Advocate for the applicant would submit that there is no sufficient ground for proceeding

against the applicant-accused. Learned Advocate took me through the relevant police papers to submit that the trial Court erred in not discharging the applicant/accused from the case.

The learned APP would, on the other hand, justified the impugned order. He also took me through the relevant statement of the witnesses.

4. Chapter XVIII of the Code of Criminal Procedure speaks of trial before the Court of Sessions. Section 227 thereof reads thus :

"227. Discharge :- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so."

5. In (2008) 10 SCC 394 [**Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra**], the Hon'ble Supreme Court held :-

"It is trite that the words "not sufficient ground for proceeding against the accused" appearing in Section 227 Cr.P.C. postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to

determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.”

6. The First Information Report (FIR) was lodged by the brother of the deceased Surekha Vijay Rathod on 23.08.2018. It has been alleged in the FIR that the applicant (accused No.2) has illicit relationship with Vijay Rathod (accused No.1), husband of the deceased. On 23.08.2018, the deceased was murdered at her residence during day time. She died of cut throat injury. It has further been alleged in the FIR that the applicant/accused No.2, the husband of the deceased and other accused conspired together and got Surekha killed.

7. The case is based on the circumstantial evidence. The applicant/accused is alleged to have been a privy to the conspiracy pursuant to which, Surekha was murdered.

8. The learned APP took me through the statement of Sanjivani Dhepe and one Sangram Kendre, a Police Head Constable. I have carefully perused both the statements and other statements on record, as well. The statement of Sanjivani suggests that the applicant had an extra marital relationship with the husband of the deceased. On 13.05.2018, she (Sanjivani) accompanied the applicant, husband of the deceased and one Ajay Asolekar, first to Shirdi and then to Pune. There, they stayed in the hotels. The statement of Sanjivani further disclosed that the trio, namely the applicant, husband of the deceased and Ajay Asolekar had secret talk. Sanjivani however could not divulge anything. The statement of Sangram indicates that he visited Hotel Uma Executive, Shivajinagar, Nanded and Hotel Sai Executive, Pune, collected extract of the hotel registers. His statement indicates that on 15.05.2018, the applicant, Vijay (accused No.1), Ajay Asolekar and one more person had stayed in two rooms. I have also perused the statements of other witnesses. From the statements of the witnesses relied on by the prosecution, it could only be concluded that the applicant/accused has extra marital relationship with the husband of the deceased. The applicant did not pay heed to the request of the deceased to discontinue the relationship with her husband (accused No.2)

9. True, the applicant was arrested from Hyderabad. She was pregnant of five months. There is, however, prima-facie nothing to indicate the applicant to have been a privy to the alleged conspiracy to commit murder of the deceased Surekha. The trial Court, in the facts and circumstances of the case, should have allowed the application Exh.66. Interference with the impugned order is therefore called for.

10. In the result, the criminal application succeeds. The same is, therefore, allowed in terms of prayer clause (B).

[R. G. AVACHAT, J.]

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