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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO.191 OF 2020

Aayeshabi Ayyaz Khan ... Applicant.
Vs
The State of Maharashtra ... Respondents
...

Mr. Arun K. Rajput for the Applicant.
Ms. Sharmila Kaushik, APP for the Respondent-State.
PI Sunil R. Dahiphale, Hinjawadi P.Stn., Pune.

CORAM : SANDEEP K. SHINDE J.
DATE : SEPTEMBER 23, 2021.
(Through Video Conferencing)

JUDGMENT :

Rule.

2 Rule made returnable forthwith. With consent of the parties, revision is taken up for final hearing forthwith.

3 This revision under Section 397 of the Code of Criminal Procedure, 1973 ('**Cr.P.C.**' for short) challenges the

order dated 24th April, 2019 by which the learned Ad-hoc Additional Sessions Judge, Greater Bombay, Mumbai refused to pass order of discharge under Section 227 of the Cr.P.C.

4 Facts essential for decision of this application are as under;

Applicant is accused no.4 in Sessions Case No.471 of 2018. She has been prosecuted for the offence punishable under Sections 302, 201 and 212 of the Indian Penal Code, 1860. Prosecution case in brief is that, on 31st January, 2015, control room received a message that at the Shivaji Nagar, near dumping ground in a ditch, body of unknown person was found burning. After which fire brigade was summoned and fire was doused. Whereafter body was removed to the hospital at which he was declared dead. Accidental death enquiry was held. Post-mortem report revealed, that cause of death was Asphyxia following burn associated with ligature marks around the neck. Whereupon

Crime No.61 of 2015 came to be registered under Sections 302, 201 of the IPC. On 5th February, 2015. Nagma Ayyaz Khan, Sarvar Umar Farooq Shaikh and Shoab M. Mirza Baig were arrested. Applicant is mother of Nagma (Accused No.1). Deceased Shamim Ashfaq Khan was Nagma's first husband. Deceased was staying with Nagma at Gautam Nagar. There were disputes and differences between Nagma and the deceased. On 31st January, 2015, Nagma and Sarvar (accused no.2), second husband of Nagma, dealt a blow by weapon on the head of the deceased and strangled him in the house, building no.19-C-702 at Gautam Nagar. Whereafter accused no.2 and his friend Shoab (accused no.3) carried the body of the deceased in plastic sack and burnt it in dumping ground at Shivaji Nagar. Statement of fourteen witnesses were recorded. Whereafter final report was filed on 28th April, 2015. One of the witnesses, Mr. Ashfaq Khan filed Writ Petition No.2992 of 2015 seeking re-investigation by an independent agency alleging that proper investigation was

not carried out. Writ Petition was not entertained. Petitioner Ashfaq was directed to approach the Trial Court. Thereafter the Trial Court vide order dated 16th May, 2016 directed further investigation under Section 173(8) of the Cr.P.C. after which prosecution recorded statements of thirteen witnesses.

5 In the further investigation, applicant's complicity, who is mother of accused no.1, was disclosed and, therefore, supplementary charge-sheet was filed against her in March, 2018. Applicant seeks discharge on the premise that the final report filed against the accused nos.1 to 3 in April, 2015 and supplementary charge-sheet filed against the applicant does not disclose any material against the applicant and, therefore, it is argued that there is no sufficient ground for presuming that the applicant has committed the offence.

6 As against this submission, the prosecution relied on Call Detail Records of the accused to contend that applicant was in contact with the accused no.1 before and after the incident. The learned Prosecutor would rely on the statement of one witness, Mr. Shampuri Goswami (neighbour of accused no.1) and of Smt. Asma Khatun Khan to contend that statements of these witnesses suggest, presence of the applicant in the house of the accused no.1 where the deceased was allegedly strangled. I have perused the statements of these witnesses. A statement of Shampuri Goswami was recorded on 27th March, 2015. It is part of the first charge-sheet filed against accused nos.1 to 3. In fact, statement of this witness suggests that applicant (mother of accused no.1) was never seen by him at Nagma's house. Thus, the statement of this witness is to be kept out of consideration. Next statement is of Asma Khatun Khan, a neighbour of Nagma where the deceased was allegedly strangled. Statement of this witness was

recorded in February, 2017, i.e., nearly after twenty-four months from the incident. This witness would state that Nagma was living in neighbouring flat since 2014. That Nagma and her husband were frequently quarreling. Nagma's mother was visiting her daughter's flat. Her statement suggests, when police enquired with her in February, 2015, at that time, she came to know that Nagma killed her husband. She would further state that two days before the alleged incident, Nagma's flat was seen locked. She would say that applicant never stayed at Nagma's flat. However, on the day of the alleged incident, she had seen the applicant at Nagma's House.

7 Question is whether, there is sufficient ground for proceeding against the applicant.

8 For the purpose of determining whether there is sufficient ground for proceeding against the accused, the Court possesses comparatively wider discretion in the

exercise of which it can determine the question whether material on record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible as held in the case of **State of Karnataka v. L. Muniswamy and Ors reported in 1977 SC 1489**. In the case of **State of Maharashtra v. Som Nath Thapa** reported in **AIR 1996 SC 1744**, Hon'ble Apex Court has held that if the Court comes to a conclusion that commission of the offence is a probable consequence, a case for framing of charge exists and at the stage of framing the charge, probative value of the materials on record cannot be gone into. It is settled law that the purpose of Sections 227 and 228 of the Cr.P.C. is to ensure that the Court should have satisfied that accusations made against the accused is not frivolous and that there is some material for proceeding against him. In the case of **Rajbir Singh v. State of Uttar Pradesh** reported in **AIR 2006 SC 1963**, the Apex Court has held that at the stage of framing the charge, the Court has to see if there is sufficient ground for presuming that the

accused has committed an offence. If the answer is affirmative, order of discharge cannot be passed and the accused has to face the trial.

9 In the light of authoritative pronouncements, now it is to be ascertained whether there is sufficient ground for proceeding against the applicant.

10 It cannot be overlooked that in April, 2015, the final report was filed against the accused nos.1 to 3. It is only after the directions were issued to conduct further investigation, prosecution has recorded the statements of thirteen witnesses. Herein the prosecution largely relies on the statement of Smt. Asma Khatun Khan eventually neighbour of accused no.1. Her statement reveals that the police had enquiry with her about the incident in February, 2015. It reveals from her statement that she came to know about the incident only after the police made enquiries with her in February, 2015. Admittedly, her statement was

recorded nearly after twenty-four months, i.e., on 2nd February, 2017. This piece of evidence is to be kept out of consideration for simple reason; that when the police enquired with her immediately after the incident, it appears, she was unaware of the incident. Her statement has been recorded in 2017. Although she has, stated that she had seen the applicant in the house of Nagma during the day time on the date of incident, it contradicts her earlier part of the statement wherein she disclosed that she came to know about the incident when police enquired with her two days after the alleged incident. In so far as the Call Detail Records (CDR) are concerned, calls made by the daughter to the mother or by mother (applicant) to daughter (accused no.1) cannot be said to be material disclosing the complicity of the applicant in the crime in question.

11 After weighing the evidence for limited purpose of finding out whether or not prima-facie case against the accused has been made out, in my view, the material placed before me is not sufficient to proceed against the applicant. The statement of Asma Khatun Khan may give rise to some suspicion but not grave suspicion and, therefore, in my view, there is no sufficient ground for presuming that the applicant had committed offence in question.

12 For the aforestated reasons, revision is allowed. In consequence, the impugned order dated 24th April, 2019 is quashed and set aside. The applicant is discharged.

13 Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J.)