

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

CRIMINAL WRIT PETITION NO. 1106/2019

Munnibai wd/o Ramsingh Bais .vs. State of Maharashtra through Secretary,
Home Department, Mantralaya, Mumbai and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. M. J. Khan, A.P.P. for respondents-State.

CORAM : V.M. DESHPANDE AND
ANIL S. KILOR, JJ.

DATED : JANUARY 5, 2021

This writ petition is filed by mother of deceased, who was done to death on 27.10.2019 at about 23:30 Hrs. One Sanket Bais lodged a report about the homicidal death of Rohit on 28.10.2019 at 4.44 a.m. On the basis of that, at Police Station, Wardha, crime was registered for an offence punishable under Section 302 read with section 34 of the Indian Penal Code against two persons namely; Shiva Madavi and Shubham Madavi. They were arrested on 28.10.2019. Before investigation was complete, the present petitioner Smt. Munnibai, mother of deceased Rohit approached to this Court by filing the present writ petition making a prayer that the respondents authorities namely; Superintendent of Police and Police Station Officer, Wardha shall arrest other accused persons involved in crime and collect evidence for filing of the charge-sheet.

On 13.02.2020, notice for final disposal was issued. The matter, thereafter, listed for admission on 12.03.2020. On the said day, counsel for the petitioner

Mr. A. Wasnik, chose not to remain present before this Court. Therefore, in order to give one chance, the writ petition was posted for 16.03.2020 by observing that if on 16.03.2020, if learned counsel remains absent, the Court will proceed with the matter even in his absence. After the aforesaid order was passed, lockdown was imposed and on 07.12.2020, the matter was listed before the Court. On the said day, learned counsel for the petitioner was absent and therefore the matter was kept on 14.12.2020. On 14.12.2020, counsel for the petitioner again remained absent. Mr. Khan, learned A.P.P. on the said day, made a submission before the Court that the main accused persons are already arrested and they are in jail. In view of this statement, matter was kept today in order to give one chance to the counsel for the petitioner.

Today also, Mr. Wasnik, learned counsel for petitioner, chose not to remain present before the Court.

We have heard the learned A.P.P. for the State. He is also having copy of the charge-sheet.

As per the submissions of the learned A.P.P. for the State, during investigation, statement of the witnesses were recorded. One eye witness Sudha Shedmake attributed role only to accused Shiva Madavi. Whereas other eye witness by name Vishnu Shedmake attributed role to accused Shiva and Shubham Madavi. Similarly, another eye witness Imran Pathan, Shahrukh and Rajesh also attributed role to the aforesaid two persons. It is also submission of learned A.P.P. that during investigation, the investigating officer has recorded statements of Vishnu

Sedmake under Section 161 of the Code of Criminal Procedure in which he has attributed role only to Shiva and Shubham. However, when his statement under Section 164 of the Cr. P. c. was recorded, he attributed some overt acts against the prosecution witnesses.

The investigation is already over. Charge-sheet is also filed vide charge-sheet no.24/2020. Accused persons Shiva and Shubham are arrested and they are languishing in jail.

There is a variance between statements of Vishnu recorded under Sections 161 and 164 of the Code of Criminal Procedure. Truthfulness of his statements will decide during trial. It has to be observed here that if during trial the learned Judge before whom the trial will be conducted, notices that apart from Shiva and Shubham there is an evidence against the other persons in respect of the homicidal death of Rohit, the Court has wide power under Section 319 of the Code of Criminal Procedure to proceed against such persons even though they are not charge-sheeted or even against them at commencement of the trial, charge is not framed. This being the position, we are of the view that no fruitful purpose will be achieved by keeping the present writ petition pending.

Consequently, the writ petition is dismissed.

JUDGE

JUDGE

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