



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

CRIMINAL APPLICATION (BA) NO.1117 OF 2023

[Shiwani Ajay Bodanwar ..V/s.. State of Maharashtra.]

WITH

CRIMINAL APPLICATION (BA) NO.1031 OF 2023

[Ramprakash Tulsiram Tiwari alias Tripathi ..V/s.. State of Maharashtra.]

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

Court's or Judge's order

Mr S. V. Sirpurkar, Advocate for Applicant in BA-1117 of 2023.

Mr R. S. Renu, Advocate for Applicant in BA-1031 of 2023

Mr A. G. Mate, APP for Respondent/State in BA No.1031 of 2023

Ms M. A. Barabde, APP for Respondent/State in BA No.1117 of 2023.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 22nd DECEMBER, 2023.

. By these applications, the applicants are seeking bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with crime No.376 of 2023, registered under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860.

2. The applicant – Shiwani Ajay Bodanwar in Criminal Application No.1117 of 2023 is arrested on 22.04.2023, whereas the applicant Ramprakash Tulsiram Tiwari alias Tripathi, in Criminal Application No.1031 of 2023, is also arrested on 22.04.2023.

3. The accusation against the present applicant is on the basis of report lodged by the applicant – Shiwani herself on the contention that the deceased is her uncle (mother's sister's husband). She was residing alongwith her maternal grandmother

Pushpa Shyamrao Kodurwar since childhood in Ballarsha. She is a student studying in 1st Year of M.B.A. in S. B. Jain Institute of Technology, Management and Research, Nagpur. The said Pushpa has three daughters namely Sunita, Sangita and Yamini. Her daughter Sangita married to Vishal Dasarwar, who is the deceased. After marriage, Sangita resumed cohabitation with her husband at his place for two years, but as deceased was addicted to bad vices like drinking liquor used to beat her daily. Due to the continuous ill-treatment at the hands of deceased, Sangita left the house of the deceased and started staying with her parents in Ballarsha. However, deceased used to visit Sangita's maternal home in drunken condition, used to trouble all the family members constantly. He was harassing the grandmother of the applicant - Shiwani on account of transferring the property in his name. On 18.04.2023, applicant's grandmother was admitted to the Government Hospital. On 20.04.2023, deceased assaulted applicant with the hammer. On 21.04.2023, Sangita left her maternal house alongwith her daughter as deceased was constantly beating her. On 21.04.2023 at about 10:30 p.m., deceased was abusing applicant and her family members in drunken state and thereafter left. Again he came in night at about 1:00 a.m. and thereafter he found lying on bed. It is alleged that prior to the incident, he has assaulted the applicant by throwing her on the ground. As the applicant - Shiwani fed up with his continuous harassment, she alleged to have committed his murder with the help of another applicant - Ramprakash and other co-accused. Shiwani herself approached to the Police Station and lodged report and initially narrated the incident that

she has pressed the neck of the deceased and committed his murder. Subsequently, the statement is recorded and in that she has stated that with the help of the another applicant - Ramprakash and other co-accused by tying the hands and legs of the deceased, she gave a blow by means of shaving blade on the neck of the deceased and caused his death. On the basis of said report, Police have registered the crime against both the applicants.

4. Mr Renu, learned counsel appearing for Ramprakash, who is applicant in Criminal Application No.1031 of 2023, submitted that as far as the allegation against the present applicant is concerned is only to the extent that he has tied the hands and legs of the deceased and assisted the other co-accused in committing the murder. There is no intention or motive for him to commit the murder. The investigation is completed and charge-sheet is filed. He further submitted that the circumstances under which the alleged incident has taken place is to be taken into consideration as every family members were fed up with the behavior of the deceased and therefore, he was eliminated and prays for releasing the applicant on bail.

5. Mr Sirpurkar, learned counsel for the applicant – Shiwani, submitted that the crime is registered on the basis of information given by the applicant. The said information is in the nature of confessional statement. The law relating to the confession is well settled and the confession of the present applicant before the Police Officer is not at all admissible. He further submitted that the confession or an admission is the

evidence against the maker of it, unless its admissibility is excluded by some provision of law, Section 24 excludes confessions caused by certain inducements, threats and promises. He further submitted that it is settled by the *catena* of decisions that a confession which is a self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. In support of his contentions, he placed reliance on *Aghnoo Nagesia vs State of Bihar*, reported in (1996) 1 SCR 134.

6. He further submitted that the alleged incident has taken place due to the grave and sudden provocation at the hands of the deceased. Therefore, the entire case comes under the exception of 1 under Section 300 and therefore, at the most the case covers under Section 304 part-I and not more than that. He further submitted that the present applicant is girl, who is taking education and pursuing her M.B.A. The investigation is completed and charge-sheet is filed. Further incarceration of the present applicant is not required and hence she be released on bail.

7. Ms Barabde and Mr Mate, learned APP for the State submitted that besides the confessional statement, the recovery at the instance of applicant - Shiwani, a blood stained clothes show her involvement in the alleged offence. Considering the gravity of the alleged offence and injuries sustained by the deceased, it is crystal clear that with an intention, the injuries are caused to eliminate the deceased. Though investigation is completed, the

gravity of the offence for which maximum punishment of death penalty is provided, the applications deserve to be rejected.

8. Having heard the learned counsels for the applicants and learned APPs for the State, perused the investigation papers. There is no dispute as to the fact that the crime is registered on the basis of report lodged by the applicant – Shiwani herself. The recitals of the FIR are in the nature of confessional statement. During investigation, the Investigation Officer has also recorded the statement of wife of the deceased, who has also substantiated the contention which are narrated in the FIR. In her statement, she also stated that her husband was continuously harassing not only to her but her family members also. Though she left the company of her husband, he used to visit to her matrimonial house and was insisting her mother to transfer the property in his name. On 10.04.2023, the applicant – Shiwani had come to Ballarsha and on 20.04.2023 since 6:00 am deceased was abusing her sister and applicant - Shiwani continuously. The deceased has also thrown her on the ground and assaulted her. On 21.04.2023 also the deceased came to her home under the influence of liquor and was threatening her that he will kill her and was kicking the door of the room wherein her sister and applicant – Shiwani had sustained injuries and he was attempting to assault. Therefore she left the house of her mother and went at her friend's house. On 22.04.2023, she received the information regarding the death of the deceased. Thus from the statement of the wife of the deceased, it reveals that as the deceased was continuously harassing the family members and especially the

applicant – Shiwani, the alleged incident has taken place. During investigation, the Investigating Officer has recorded various statements and from various statements, it reveals that it was the deceased who was troubling and harassing all the family members and all the family members were fed up with his behavior which resulted into the occurrence of the said incident.

9. Mr Sirpurkar, learned counsel has placed reliance on the decision of the Hon'ble Apex Court in *Aghnoo Nagesia* (supra), wherein the law regarding confession is discussed by the Hon'ble Supreme Court and in para No.18 it is held that if the first information report is given by the accused to a Police Officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27. The Hon'ble Apex Court has also held that the confession in the nature of first information report is not admissible against the appellant and appeal was allowed by acquitting the accused. This Court has also considered the aspect of first information report by the accused and held in *Rohidas Manik Kasrale vs. State of Maharashtra, Criminal Appeal No.1496 of 2003 decided on 07.12.2011*, wherein it is held that the first circumstance sought to be proved against the appellant is that he had confessed about his guilt. There is no doubt that the first information report lodged by him, being confessional in

nature, cannot be used against him in view of the provisions of Section 25 of the Evidence Act. The legal position being very clear and undisputed on this point, this aspect does not need any further discussion. This Court has further referred various judgments and held that Section 25 of the Evidence Act provides that no confession made to a Police Officer shall be proved as against a person accused of any offence. Section 26 of the Evidence Act provides that no confession made by any person whilst he is in the custody of a Police Officer shall be proved as against him unless such confession is made in the immediate presence of a Magistrate.

10. Thus, the The admissibility of a confession made by an accused to a third person in the presence of Police Officer has been an issue which has been the subject matter of the appeal before the Court and while dealing with this aspect, it is held that the confession in the nature of first information report by the accused cannot be used against the accused. In *Om Prakash vs. State of U.P.*, reported in *AIR 1960 SC 409*, also this aspect is considered and by referring the judgment of *Privy Council* in *Pakala Narayana Swami vs. Emperor*, and held that a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact is not of itself a confession, for example an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion

appears to have been caused by the definition of 'confession' in Article 22 of Stephen's 'Digest of the Law of Evidence' which defines a confession as an admission made at any time by a person charged charged with a crime stating or suggesting the inference that he committed that crime. If the surrounding circumstances are examined it will be apparent that the learned Author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following Articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872 and in that Act, it would not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed' the crime. Thus, now it is well settled law that the confession by the accused before the Police Officer cannot be used against the accused.

11. In *Murli alias Denny vs. Rajasthan*, reported in *1995 Supp (1) SCC 39*, wherein also the Hon'ble Apex Court held that confessional statement cannot be used for any purpose in favour of prosecution against the accused. However, the only admission in favour of accused can be taken into account to examine whether the case falls under exception 1 to Section 300 of IPC, particularly, when there is no other evidence disclosing as to how the quarrel ensued and attack took place.

12. Having gone through the settled law and the facts of the present case, in the present case also, the various statements recorded by the Investigating Agency shows that the deceased was addicted to bad vices and was continuously harassing the family members prior to the incident and also continuously he has harassed the applicant - Shiwani and other family members. The grandmother of the applicant – Shiwani was also harassed for transferring the property in his name. The recitals of the FIR and the statement of the wife of the deceased show that on 21.04.2023, also the deceased had come to the house under the influence of liquor and since 6:00 a.m. he was continuously abusing the applicant – Shiwani and other family members. Due to the continuous harassment, wife of the deceased left the house along with her daughters and took a shelter at her friend's house. The allegations further show that the deceased has thrown the applicant on the ground and also assaulted her. Thus, the facts show that it had created the fear in the mind of the present applicant and thereafter the said occurrence has taken place. There is a clear indication from the FIR and the statements of the witnesses that the deceased was in aggressive manner came at the house of the applicant and showered various abuses thereafter he also assaulted the applicant and was threatening continuously. Due to which, the applicant – Shiwani has lost the control and the alleged occurrence has taken place. Thus, at this stage there is *prima facie* case to hold that the case falls under exception 1 of Section 300 particularly in view of the fact that there is no other evidence disclosing as to how the quarrel took place and attack took place. Having carefully considering the entire material,

admittedly the applicant has made out the case under exception 1 to Section 300 which lays down culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. Admittedly, the incriminating material as per the prosecution is that the blood stained clothes were found on the person of the applicant – Shiwani. Even it is taken into consideration that it is the incriminating circumstance against the present applicant, now at this stage investigation is completed and charge-sheet is filed. Considering the circumstances in which the alleged incident has taken place, admittedly, there was no intention or motive to eluminate the deceased but the circumstances forced her to act and thereafter the alleged incident has taken place. The applicant who is pursuing her MBA studies there are no criminal antecedents against her. The application of the applicant – Shiwani deserves to be allowed by imposing certain conditions.

13. As far as the another accused Ramprakash is concerned, only allegation against him that he has assisted the present applicant in executing the act. He has tied the hands and legs of the deceased. His application also deserves to be considered considering his act. Therefore, both the applications deserve to be allowed. Accordingly, I proceed to pass the following order :

ORDER

i) Criminal Application No.1117 of 2023 and Criminal Application No.1031 of 2023 are **allowed**.

ii) The applicants, namely Shiwani Ajay Bodanwar and Ramprakash Tulsiram Tiwari alias Tripathi, are released on bail on executing P.R. Bond in the sum of Rs.25,000/- each with one solvent surety of like amount in connection with Crime No.376 of 2023, registered under Section 302 and 201 read with Section 34 of the IPC.

iii) The applicants shall attend the concerned Police Station once in a first week of every month, till the culmination of trial.

iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

v) Both the applicants shall furnish their cell phone number with address proof.

14. Both the applications are disposed of.

JUDGE