



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL APPLICATION NO.996 OF 2024

1. Nisha D/o Mothabhau Shewale,
Age : 21 years, Occu. : Pharmacist,
R/o : Plot No. 142, Adarsh Nagar,
Sakri, Tq. Sakri, District Dhule.
2. Shri Vinod S/o Bharat Sonar (Nashikkar),
Age : 39 years, Occu.: Agriculture,
R/o : Kalpana Niwas,
Samangaon Road, Near Trimurti Lawns,
Bhor Mala, Sinnar Phata,
Nashik, District Nashik — 422101

.. Applicants

Versus

1. The State of Maharashtra
Through Police Inspector,
Sakri Police Station,
Tq. Sakri, District Dhule,
2. Sau. Jyotsana Nilesh Patil,
Age : 40 years, Occu.: Household,
R/o : Saraswati Nagar,
Adjacent to Vimalbai College,
Sakri, Tq. Sakri, District Dhule.
At present R/o : 32,
Gayatri Nagar, Shajapur,
Tq. and District Shajapur, (M.P.)

.. Respondents

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Mr. Nilesh N. Desale, Advocate for Applicant
Mr. S. V. Hange, APP for Respondent No.1 – State.
Mr. Y. B. Bolkar h/f Mr. L. S. Mahajan, Advocate for Respondent
No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 20 AUGUST, 2024.

ORDER :-

. Present application has been filed under Section 482 of the Code of Criminal Procedure for quashing the FIR vide Crime No.401 of 2023 registered with Sakri Police Station, Taluka Sakri, District Dhule for the offences punishable under Sections 395, 364, 120-B, 201 of Indian Penal Code and under Section 3 punishable under Section 25 of the Indian Arms Act.

2. Heard learned Advocate for the applicants and learned Advocate for respondent No.2, who appear *suo moto* and filed the affidavit-in-reply on behalf of respondent No.2.

3. The respondent No.2 in her affidavit-in-reply submits that applicant No.1 is her niece. After the arrest of applicant No.2, the involvement of applicant No.1 was seen, but in view of the settlement talks of the family members, she has arrived at a compromise and has no objection for quashing the FIR.

4. We have considered the investigation papers. The investigation is still going on and the charge-sheet is not yet filed.

When respondent No.2 had filed the FIR, at that time, it was against unknown person and she has stated that in all, four to five unknown persons had entered her house when she was sitting along with applicant No.1 around 10.30 p.m. on 25.11.2023 and then by showing knife as well as pistol, demanded the gold articles. She was tied with the piece of cloth and while going, those persons had taken applicant No.1 along with them. They had taken gold and silver articles worth Rs.88,500/-. At this stage itself, we would like to say that the contents of the FIR were in fact disclosing the offence under Section 397 of the Indian Penal Code. Though injury might not have been caused, yet showing of knife as well as pistol amounts to its “use” as contemplated under Section 397 of Indian Penal Code. We may support the view taken in the decision of **State of Maharashtra Vs. Vinayak Tukaram Utekar and Ors. [1997 (2) Mh.L.J. 527]** as well as the Three Judge Bench decision of the Hon’ble Supreme Court in **Ram Ratan Vs. State of Madhya Pradesh, [2022 LiveLaw (SC) 14]**. Therefore, the gravity of the offence is more.

5. Section 364 of Indian Penal Code was invoked in view of the above said contents of the FIR regarding the abduction of

applicant No.1. However, the investigating agency has now come with a case that, in fact, applicant No.1 was with applicant No.2 and other accused persons and the entire conspiracy has been hatched up. As regards the other accused persons involved in the matter, it appears that only one accused has been arrested apart from applicant No.2 and other accused are yet not arrested. It also appears that some articles have been recovered in the matter. The statement of respondent No.2 has been recorded under Section 164 of the Code of Criminal Procedure. It appears that later on Section 364 of Indian Penal Code has been deleted in view of the communication dated 30.11.2023 to the learned Judicial Magistrate First Class and Section 307 of Indian Penal Code has been added with Sections 120-B and 201 of Indian Penal Code.

6. Learned Advocate for the applicant has vehemently stated that the compromise has taken place in view of the fact that applicant No.1 is the niece of respondent No.2 and taking into consideration her bright future and the problems she may face at a later stage, respondent No.2 agreed and now she has no objection for quashing the FIR.

7. Perusal of the affidavit-in-reply would show the relationship between applicant No.1 and respondent No.2, however, there appears to be no relationship between applicant No.2 and the respondent No.2. Affidavit is silent on the point as to why there is settlement between applicant No.2 and respondent No.2. Taking into consideration all these things, we had expressed our disinclination, thereupon the learned Advocate for the applicants seeks withdrawal of the application with liberty to file appropriate proceedings after filing of the charge-sheet.

8. In view of the aforesaid observations and now when the applicants seek withdrawal of the application, the application stands disposed of as withdrawn. If there is any right available to the applicants to file any application, then they are at liberty to exhaust the same.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm