

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

CRIMINAL APPLICATION (BA) NO.438 OF 2024

(Namdeo Shivaji Bhusari Vs. The State of Maharashtra thr. PSO PS Malegaon, Dist.
Washim)

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

Court's or Judge's orders.

Mr. R. M. Daga, Advocate for Applicant.
Ms. H. N. Prabhu, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 2nd JULY, 2024.

1. Heard.
2. The applicant came to be arrested on 21.11/2023, in connection with Crime No.529/2023 registered with Police Station Malegaon, District Washim for the offence punishable under Section 302 of the Indian Penal Code.
3. The accusation against the present applicant is on the basis of report lodged by the applicant himself, on the contention that the deceased is his brother-in-law who was addicted to bad vices and therefore, all the family members have decided to take him to the deaddiction centre and therefore, he was taking him in his vehicle at the deaddiction centre when they were proceeding the deceased has assaulted him by means of 'koyta' sickle due to which the applicant has sustained injury and to save himself as he was attacked by the deceased, he gave a blow of jack and

sickle on the person of the deceased due to which deceased succumbed to the death. On the basis of said report police have registered the crime against the present applicant.

4. Heard learned counsel Mr. Daga for the applicant, he submitted that as far as the alleged incident is concerned even taking a case as it is there was no intention on the part of the applicant to commit the murder of deceased. When the applicant was taking deceased in the deaddiction centre it was the deceased who was unwilling to go and every family member was fed up and therefore, he was taking him to the deaddiction centre but the deceased disliked it and therefore, he gave a blow of sickle on the person of the present applicant, and therefore, to protect himself he has given a blow of jack on the person of the deceased and deceased has sustained the injury. He submitted that as far as the confessional statement of the present applicant before the police and lodging the report is concerned which is not admissible in view of the catena of decisions. He placed reliance on the order passed by this Court in Criminal Application (BA) No.1196/2022 wherein the decision of the Hon'ble Apex Court in the case of *Aghnoo Nagesia v. State of Bihar*, reported in (1966) 1 SCR 134, *Rohidas Manik Kasrale v. State of Maharashtra*, in *Criminal Appeal No.1496/2023 decided on 07.12.2011*, *Om Prakash v. State of U.P. [AIR 1960 SC 409]* and *Murli alias Denny v. Rajasthan [1995 Supp (1) SCC 39]* are referred. He submitted that in view of the catena of decisions the law regarding confession is discussed by the Hon'ble Apex Court

and in para 18 of the *Aghnoo Nagesia v. State of Bihar* 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. He further submitted that 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. He submitted that in view of the settled principle of law and considering the facts of the case that there was no intention on the part of the present applicant to commit the murder of the deceased and whatever happened in a sudden provocation due to the act of the deceased therefore, the applicant be released on bail.

5. The learned APP for the State strongly opposed the said application on the ground that the gravity of the offence is to be taken into consideration as the applicant has given repeated blow on the deceased which resulted into his death. *Prima facie* case is made out against the present applicant and assaulted by means of sickle and but also by the jack of the vehicle and she also pointed out from the statement of the witnesses that the deceased was threatened by the present applicant and prayed for rejection of the

application.

6. Heard learned counsel for the applicant and learned APP for the State 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 in case of *Aghnoo Nagesia* 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 v. State of U.P.* referred to supra wherein this aspect is also considered and by referring the judgment of ***Privy Council in Pakala Narayan Swami v. Emperor***, and it is held that the 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 the Stephen's Digest of the Law of Evidence which defines a confession as an admission made at any time by a person 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 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 that the confession by the accused before the Police Officer cannot be used against the accused.

7. In *Murli alias Denny vs. Rajasthan*, [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.

8. 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, therefore all the family members have decided to take him at deaddiction centre when the applicant who is the brother-in-law was taking him deceased to the deaddiction centre, deceased dislike him gave a blow of sickle, on the hand of the

applicant and therefore, to save himself from the further attack he has given a blow of jack which was kept in the vehicle and the sickle on the person of the deceased due to which death of the deceased is caused. Therefore, at this stage there is a *prima facie* case to held that the case falls under exception 1 of Section 300 of IPC particularly, in view of the fact that there is no other evidence disclosing any other reason to show that the deceased was killed by the present applicant for other reason. Having carefully considering the entire material, admittedly the applicant has made out the case to release him on bail. In view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

- i] Criminal Application is allowed.
- ii] The applicant – Namdeo Shivaji Bhusari is released on bail on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety of like amount in connection with Crime No.529/2023 for the offence punishable under Section 302 of the Indian Penal Code.
- iii] The applicant shall attend the concerned Police Station first day of every month, till the culmination of trial.
- iv] The applicant shall not directly or indirectly make any inducement and threat or promise

to any person acquainted with the facts of the present case.

v] The applicant shall furnish his cell phone number and address with address proof.

9. The application is disposed of.

JUDGE

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