



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

CRIMINAL APPLICATION (BA) NO. 613 OF 2024

Smt. Vidhya w/o Namdeo Wagh Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. B.L. Borikar, counsel for applicant.

Mrs. H.N. Prabhu, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/09/2024.

1. Present applicant came to be arrested on 06/12/2022, in connection with Crime No. 756/2022 registered with Police Station Mouda, District Nagpur for the offence punishable under Section 302, 203 read with Section 34 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by the sister of the deceased, namely Sheela Khute, alleging that the present applicant was having illicit relations with one Kiran Govindrao Akare, i.e. co-accused, and in furtherance of their common intention, they have committed the murder of the deceased on 02/12/2022 by pressing the neck of the deceased. On the basis of said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that other co-accused with the similar role is already released on bail by this Court. Thus, on grounds of parity also, the applicant shall be released on bail. Learned counsel further

invited my attention towards various statements of the witnesses and submitted that all witnesses whose statements are recorded are interested witnesses, and there is nothing on record to show that, the present applicant was having illicit relations with the co-accused, and in furtherance of common intention, she has committed the murder of the deceased.

4. Learned APP strongly opposed the said application on the ground that, considering the gravity of the offence, the present applicant, who is the wife of the deceased, was along with the deceased, and she initially gave the false report regarding the cause of the death of the deceased. She informed the police that death of the deceased was caused, as he hanged himself. But during the investigation, it revealed that the death of the deceased is due to the constriction of the neck. At the relevant time, the deceased was along with the present applicant. Thus, though the case is based on circumstantial evidence, the circumstance is that only the applicant was present along with the deceased, therefore, she has to explain regarding the death of the deceased. At this stage, the statement of the present applicant at whose instance the incriminating article is seized. The statement of the witnesses, which shows the presence of the present applicant along with the deceased on the faithful day, at the time of incident, and cause of death of deceased shows that death is not due to hanging, but it is due to constriction of the neck. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that it was alleged that the present applicant was having illicit relations with the co-accused. There was matrimonial dispute pending between the deceased and the present applicant also, which was settled subsequently, and therefore, the present applicant was residing along with the deceased. The statements of the witnesses show that on the faithful day, the present applicant was along with the deceased, and she informed the police incorrectly that the deceased died due to hanging himself. The statement of the present applicant was recorded under Section 27 of the Indian Evidence Act. The instance of the present applicant, the incriminating article as well as the spot were disclosed, and it was described. The statement of the various witnesses also discloses regarding the illicit relations between the present applicant and the co-accused. The P.M. Report shows that death of the deceased is caused due to the constriction around the neck by means of ligature. Column No. 17 of the p.m. report shows a ligature mark is not present around the neck at the level of thyroid cartilage running transversely backwards, deficient on the left side of the nape of the neck.

6. Thus, at this stage, it is difficult to accept, for defense of the present applicant, that the death of the deceased is occurred due to hanging. At this stage, there is sufficient material which attracts the prima-facie case against the present applicant. Considering the circumstance that

death of the deceased was wherein he was in the company of the present applicant, prima-facie case is not made out, the application deserves to be rejected. Accordingly, I proceed to pass the following order;

The criminal application is rejected accordingly.

[URMILA JOSHI-PHALKE, J.]