



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1367 OF 2024

Shama Daut Pathan,
Age : 48 Years, Occu. : Household,
R/o Ragalibnagar, Bhoom,
Tq. Bhoom, Dist. Dharashiv. .. Petitioner

Versus

The State of Maharashtra
Through Police Inspector,
Police Station, Bhoom .. Respondent

Shri Satej S. Jadhav, Advocate for the Petitioner.
Mrs. Ashlesha S. Deshmukh, A.P.P. for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR JUDGMENT ON : 09.04.2025
JUDGMENT PRONOUNCED ON : 22.04.2025

JUDGMENT :-

. Rule. Rule is made returnable forthwith. With the consent of parties heard finally at the admission stage.

2. The petitioner who is original informant is invoking jurisdiction of this Court under Article 227 of the Constitution of India soliciting direction to record her supplementary statement U/Sec. 164 of the Code of Criminal Procedure by quashing order dated 06.05.2024 passed by the Judicial Magistrate First Class, Bhoom in CR No. 157 of 2023 of Bhoom police station.

3. It is stated in FIR that, her son Faiyyaj committed suicide by hanging himself due to the harassment caused by the perpetrators named in the report for repayment of Rs. 35,00,000/-. The deceased was working with one of the accused Dr. Nandkumar Swami, who was forcing him to continue to work with him. A day prior to lodging report, informant was called in the bank of which Mr. Suresh Kamble was the chairman. All the accused persons insisted the deceased for refunding Rs. 35,00,000/-. He was beaten up and threatened. Before committing suicide the deceased had recorded his video clip on his mobile.

4. It is the case of the petitioner that after recording supplementary statement as well as statement U/Sec. 164 of the Cr. P. C., the petitioner requested the investigating officer to record her further statement U/Sec. 164 of the Cr. P. C., because she could gather additional information and incriminating role of Mr. Pradeep Padole who is the real perpetrator. No attention was paid to her request, hence she was required to approach the Judicial Magistrate First Class, Bhoom soliciting direction for recording her additional statement. Investigating officer opposed the same. By impugned order it was rejected.

5. Learned counsel Mr. Satej Jadhav for the petitioner submits that it is permissible to record statement U/Sec. 164 of the Cr. P. C. more than once. It is further submitted that there

is no impediment for entertaining application of a person not sponsored by investigating officer for recording statement U/Sec. 164 of the Cr. P. C. He would submit that after due enquiry informant collected information regarding culpability of one Mr. Pradip Padole, who dragged the deceased to bank, assaulted him and threatened him. It is submitted that already investigating officer has collected material and the additional statement of the informant would help the investigating agency to find out the truth and to pin down the perpetrators.

6. Learned Assistant Public Prosecutor repels the submissions of the petitioner. She would submit that already supplementary statement and statement U/Sec. 164 of the Cr. P. C. were recorded. The petitioner had ample opportunity to disclose in those statements the so called new information. It is further submitted that the application of the petitioner does not figure out special circumstances. She would therefore support impugned order.

7. I have considered rival submissions of the parties and also gone through the relevant papers of the investigation which are placed on record by the respondent. Petitioner before this court is the informant, mother of the deceased at whose instance report was lodged on 21.06.2023. Thereafter, her supplementary statement was recorded on 17.10.2023. Consistently it has come on record that there were two to three unknown persons who were present in the bank along with the deceased and the

identified accused persons, who were pressuring and threatening the deceased for refunding the money. Supplementary statement refers that one of the unidentified person was Mr. Pradeep Padole.

8. The application submitted by the petitioner to the Magistrate is not very specific as to under what special circumstances she wanted her statement U/Sec. 164 of the Cr. P. C. to be recorded. However, memo of the writ petition in paragraph No. 5 discloses that she was being influenced and pressurized when FIR was registered and the supplementary statement was recorded. It further reveals from the said paragraph that Mr. Pradeep Padole played predominant role in harassing the deceased. It will be too technical to relegate her to trial court to file detailed application.

9. The relevant papers of the investigation do not suggest that petitioner wanted to change her version and rope in some other person or stranger. Apparently, there is absolutely nothing on record to suggest that she was being instigated by accused persons or any third person to derive some benefit or to create any loop holes in the investigation. I am of the considered view that her request was for good cause and it will not be detrimental to investigation which has already been undertaken. From the material on record I do not find that there are any malafides on her part in requesting for recording of supplementary statement U/Sec. 164 of the Cr. P. C. Her endeavour is to elaborate the point involved and to reach the true facts.

10. The investigation is underway. Petitioner/informant herself is the victim or mother of the deceased and she has explained the special reason in para No. 5 of the memo of the writ petition, I am inclined to issue direction for recording her supplementary statement U/Sec. 164 of the Cr. P. C.

11. Mr. Satej Jadhav, learned counsel for the petitioner has placed reliance on the **judgment dated 12.10.2023 of the Allahabad High Court in the matter of Smt. Manorama Singh Vs. State of U. P. and others in Matters Under Article 227 No. 6848 of 2023**. The judgment has persuasive value and its paragraph No. 8 would enure to the benefit of the petitioner.

12. At the same time it would be useful to refer to judgment in the matter of Jogendra Nahak and others Vs. State of Orissa and others reported in *(2000) 1 SCC 272* of the Supreme Court. In that case four persons who were totally strangers to the investigation and the crime in question had approached the Magistrate for recording their statement. The investigation was over and the charge sheet was also filed. Those four persons had filed writ petition before the High Court for directing the learned Magistrate for recording their statement U/Sec. 161 of the Cr. P. C. and further direction for recording their statement U/Sec. 164 of the Cr. P. C. Their petition was allowed and necessary directions were issued by the High Court. Their statements were

recorded in pursuance of the directions of the High Court. Thereafter informant approached the High Court to recall its earlier direction to record the statement U/Sec. 164 of the Cr. P. C. High Court recalled earlier order and dismissed the petition filed by those persons by imposing costs. Being aggrieved four persons had approached the Supreme Court. In that context the observations are made in following paragraphs :

19. In the scheme of the above provisions there is no set or stage at which a magistrate can take note of a stranger individual approaching him directly with a prayer that his statement may be recorded in connection with some occurrence involving a criminal offence. If a magistrate is obliged to record the statements of all such persons who approach him the situation would become anomalous and every magistrate court will be further crowded with a number of such intending witness brought up at the behest of accused persons.

22. If a magistrate has power to record statement of any person under Section 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the magistrate on being approached for that purpose and those not to be recorded. The contention that there may be instances when the investigating officer would be disinclined to record statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straightaway approach a magistrate for recording his statement under Section 164 of the Code. Even for such witnesses provisions are available in law, e.g. the accused can cite them as defence witnesses during trial or the court can be requested to summon them under Section 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers) we do not find any special reason why the magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the court with a request to record their statements under

Section 164 of the Code.

23. On the other hand, if door is opened to such persons to get in and if the magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the magistrate courts for the purpose of creating record in advance for the purpose of helping the culprits. In the present case, one of the arguments advanced by accused for grant of bail to them was based on the statements of the four appellants recorded by the magistrate under Section 164 of the Code . It is not part of the investigation to open up such a vista nor can such step be deemed necessary for the administration of justice.

24. Thus, on a consideration of various aspects, we are disinclined to interpret Section 164(1) of the Code as empowering a magistrate to record the statement of a person unsponsored by the investigating agency. The High Court has rightly disallowed the statements of the four appellants to remain on record in this case. Of course, the said course will be without prejudice to their evidence being adduced during trial, if any of the parties requires it.

11. The person who is not sponsored by the investigating authority cannot approach Magistrate for direction to record statement U/Sec. 164 of the Cr. P. C. is the law laid down by the Supreme Court. The observations made above were under very peculiar circumstances. The persons who has approached the High Court soliciting directions to record their statement U/Sec. 164 of the Cr. P. C. were found to have filed frivolous and vexatious petition. It was recorded that they had failed to prove any malafides on the part of the investigating officer. Following are the observations of the Division Bench in recalling the order :

Therefore, the anxiety of the petitioners to examine themselves, is not with a view to help the investigating agency or the prosecution but to favour a person who has been charge-sheeted

as an accused. Under such circumstances, the writ application is devoid of merit. It thus appears that petitioners did not file the writ application for securing fair justice but to play tricks so as to get their statements under Section 161 and/or 164 of the Code recorded to help a charge-sheeted accused.

13. In view of clear cut mandate of the supreme Court, it would not be permissible to issue direction to the Magistrate to record the statement of the petitioner U/Sec. 164 of the Cr. P. C. However, I have already recorded that her intention is to clarify certain facts and those are in tune with the line of investigation undertaken by the investigating officer. The Supreme Court has also observed that remedies are available to bring on record true facts. It cannot be overlooked that petitioner is informant and interested in bringing home the guilt of the accused. Under these circumstances, it would be open for the investigating officer to record further supplementary statement of the petitioner. I therefore pass following order.

O R D E R

- A. Writ petition is dismissed.
- B. However, it is clarified that it would be open for the investigating officer to record supplementary statement of the petitioner and in case it is not done so, then it would be open for the petitioner to lead oral evidence which shall not be questioned on technicalities.
- C. Rule stands discharged.

[SHAILESH P. BRAHME J.]

bsb/April 25