



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2043 OF 2024

Balaji Gangaram Raje,
Age 46 yrs., Occ. C.A/Advocate,
R/o MHADA colony,
New Kautha, Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through The Police Station Officer,
Nanded Rural Police Station, Nanded,
Tq. & Dist. Nanded.
- 2 Shivaji Mahajan Patne,
Age 51 yrs., Occ. LIC Agent,
R/o New MHADA Colony,
Kautha, Nanded.
- 3 Maya w/o Shivaji Patne,
Age 44 yrs., Occ. Household,
R/o as above.
- 4 Yogeshwari d/o Shivaji Patne,
Age 23 yrs., Occ. Student,
R/o as above.
- 5 Saiprasad Shivani Patne,
Age 22 yrs., Occ. Student,
R/o as above.

... Respondents

...

Mr. P.G. Godhamgaonkar, Advocate for petitioner

Mr. A.R. Kale, APP for respondent No.1

Mr. G.A. Kulkarni, APP for respondent No.1

...

**CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.**

RESERVED ON : 07th JANUARY, 2025

PRONOUNCED ON : 10th JANUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Heard learned Advocate for the petitioner and learned APP for respondent No.1.

2 Present petitioner is the original informant, who has prayed for writ of certiorari and/or any other appropriate writ to direct respondent No.1 to impute Section 307 of the Indian Penal Code in the Charge Sheet No.368/2022 against respondent Nos.2 to 5.

3 There is no necessity to issue notice to respondent Nos.2 to 5.

4 Learned Advocate for the petitioner after taking us through the entire charge sheet including the First Information Report and the medical certificates submits that though the medical certificates have been submitted

to the Investigating Officer, he had invoked only Section 324 of the Indian Penal Code. The petitioner was admitted on 02.05.2022 and was discharged on 07.05.2022. He had sustained injury to his head and CT scan was done. The weapon that is used is iron rod, which could have caused death. The attack was with an intention to commit murder of the informant and, therefore, respondent No.1 ought to have filed the charge sheet under Section 307 of the Indian Penal Code. By relying on the decision in **Smt. Mathri and others vs. The State of Punjab** [AIR 1964 SC 986] he submits that when the High Court has failed to exercise the judicial powers, then the Supreme Court will interfere. He submits that this is the proper stage where the interference by the High Court is necessary.

5 At the outset, we would like to say that the charge sheet is filed for the offence punishable under Sections 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1980. The question is – Whether directions needs to be given for invoking Section 307 of the Indian Penal Code ? The constitutional powers of this Court under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure are invoked, but the petitioner is not contending that there is any lacuna left in the investigation. Still it is open to the prosecution and/or the petitioner to point out to the learned Magistrate that the case needs to be

committed to the Court of Session. Since the charge sheet is filed in the year 2022, Code of Criminal Procedure would be applicable. Section 323 of the Code of Criminal Procedure prescribes procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed. In this Section, if, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing Judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commencement so made. Therefore, still it can be pointed out by the present petitioner also that the case needs to be committed to the Court of Session. Under such circumstance, there is no necessity to exercise either the constitutional powers or inherent powers of this Court. With these observations, the petition stands dismissed.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)