



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

CRIMINAL APPLICATION (BA) NO. 172 OF 2025

Smt. Mamta wd/o Vijay Chauhan 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. A.M. Jaltare, counsel for applicant.

Mr. Anant Ghongre, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/04/2025.

1. The applicant came to be arrested on 22/07/2024 in connection with Crime No. 385/2024 registered with Police Station Pardi, Nagpur for the offence punishable under Sections 109, 115(2), 296, 352, 49, 103, 61(2) read with Section 3(5) of the Bhartiya Nagarik Suraksha Sanhita, 2023 and Section 135 of the Bombay Police Act, 1951.

2. As per the allegation against the present applicant, the deceased had a love relationship with the present applicant as well as an affair with the other co-accused, namely Abhishek. The co-accused Nos. 2 to 4 had been to the house of the deceased with a knife, and they have all consumed liquor at the house of the deceased. At the relevant time, there was a hot exchange of words between them, and they went to the house of the present applicant. It is alleged that, on the instigation of the present applicant, the other co-accused have

assaulted the deceased and caused his death. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who submitted that as far as the allegations against the present applicant is concerned, which nowhere show that the present applicant was involved in assaulting the deceased and causing his death. The only allegation levelled against her is that she was seen instigating the other co-accused by saying that she wants to perform the marriage with Abhishek and not with the deceased, and therefore, she asked them to assault him, and they assaulted him.

He submitted that, except the allegation of the instigation, there is no other material to connect the present applicant with the alleged offence. Now, the investigation is already completed, charge-sheet is already filed, and further incarceration of the present applicant is not required. In view of that, she be released on bail.

4. Learned APP strongly opposed the said application and submitted that on the instigation of the present applicant, the deceased was assaulted, and other accused caused his death. In view of that, the application deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that, as per the allegation, the applicant was having an affair with the deceased as well as co-accused - Abhishek. It is alleged that all the accused and the deceased were friends, they had communication with each other, and during communication at the house of the deceased, some hot exchange of words were there, and on that count, they visited the house of the present applicant. Here in the present applicant disclosed that she wants to perform marriage with the co-accused Abhishek and not with Nishant. As per the allegation, she asked the other co-accused to assault said Nishant. The 164 Cr.P.C. statement of one Akash Praksh Kawale shows that in the 164 Cr.P.C. statement he improved his version and stated that she instigated the other co-accused to kill him, which was not taken in the initial report.

6. Learned counsel for the applicant further pointed out from the various statements of the witnesses that, even accepting the allegation as it is admittedly, the present applicant was not involved in actually assaulting the deceased. This submission is taken into consideration in light of the various statements recorded during the investigation. Now, the investigation is already completed, and the charge-sheet is already filed. Admittedly, there is inconsistency as far as the statement of Akash Prakash Kawale is concerned. In his initial statement, he stated that she had instigated the other

co-accused to assault him. In his 164 Cr.PC. statement, he improved her version and stated that she had asked the other co-accused to kill him. As far as the appreciation of the evidence, which is not necessary at this stage. What is to be seen is whether there is a prima facie material against the present applicant. Considering the entire investigation papers, the only allegation against the present applicant is to the extent of instigation. Considering now the investigation is completed, charge-sheet is filed, and further incarceration of the applicant is not required, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The criminal application is **allowed**.
- b] The applicant – ***Smt. Mamta wd/o Vijay Chauhan***, shall be released on bail, in connection with Crime No. 385/2024 registered with Police Station Pardi, Nagpur for the offence punishable under Section 109, 115(2), 296, 352, 49, 103, 61(2) read with Section 3(5) of the Bhartiya Nagarik Suraksha Sanhita, 2023 and Section 135 of the Bombay Police Act, 1951, on furnishing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
 - e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
 - f] The applicant shall not enter into the vicinity of Mahal Area within the jurisdiction of Kotwali Police Station, Nagpur City, till culmination of the trial.
 - g] The applicant shall not leave the jurisdiction of Nagpur District without prior permission of the District Court, Nagpur.
7. The criminal application is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]