



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 274 OF 2024

Amol S/o Tukaram Salve,  
Age: 36 years, Occ: Labor,  
R/o.: At post Pimpalner, Tq. Lonar,  
Dist. Buldhana

...Applicant

**Versus**

1. The State of Maharashtra,  
Kranti Chowk Police Station,  
Aurangabad.
2. Kisan S/o Sakharam Salve,  
Age: 65 years, Occu: Labor,  
R/o. Pargaorkar Hospital,  
Pushpanagar, Aurangabad
3. Lata W/o Ratan Unhale  
Age: 33 years, Occu: Labor  
R/o. High Court Colony,  
Satara Parisar, Aurangabad

...Respondents

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- Mr. C. C. Deshpande, Advocate for the Applicant
- Mr. N. R. Dayama, APP for the Respondent No.1/State
- Mr. Aadil Shaikh h/f Mr. R. V. Gore, Advocate for the Respondent Nos. 2 and 3

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CORAM : ABHAY S. WAGHWASE, J  
RESERVED ON : JANUARY 21, 2026  
PRONOUNCED ON : JANUARY 22, 2026

**ORDER :**

1. In the present Revision, there is challenge to judgment and order dated 17.08.2024 passed by learned Additional Sessions Judge, Aurangabad on application Exhibit 28 in Sessions Case No. 226/2024, by which application of present Respondent under Section 227 of Code

of Criminal Procedure (“**Cr.P.C**”) was granted discharging them from offence under Sections 364, 302, 201 read with Section 34 of Indian Penal Code (“**IPC**”).

2. Learned Counsel for Revision Petitioner would point out that, Revision Petitioner is brother of deceased Avinash Salve. He further pointed out that, on the basis of report of wife of deceased Amruta Avinash Salve, Police Station, Kranti Chowk registered a crime bearing no. 35/2024 initially for charge of Section 364 of IPC. That, subsequently, dead body of informant’s husband Avinash was found and thereafter charge under Section 302, 201 read with Section 34 of IPC came to be added. It is pointed out that, initially deceased went missing on 17.03.2023 and he did not return for sufficiently on time.

3. He further pointed out that, dead body of informant’s husband was found in burned and decomposed condition. That, later on it was revealed that, in the backdrop of previous dispute, her husband was done to death and thereafter his body was set on fire. That, there was extra-judicial confession as well as memorandum of disclosure under Section 27 of Evidence Act. Learned Counsel pointed out to that, statement of witness namely, Uttam Unhale, before whom there was extra-judicial confession of committing murder of Avinash. That, apart from above evidence, there were strong incriminating circumstances

suggesting involvement of present Respondents, however, learned Trial Court discharged them by giving benefit of Section 227 Cr.P.C. According to him, in the light of availability of sufficient material, learned Trial Court ought not to have granted discharge that too by in a way appreciating the evidence, which is not expected at this stage. He pointed out that, sufficiency of material only to be tested. That, there was ample material to make accused face charge as well as trial, however, because of discharge of both accused, complainant has suffered injustice at the very inception stage itself. For all above reasons, he urges to set aside the order of passed by learned Additional Sessions Judge discharging the accused.

4. Learned APP would support above submissions.

5. On the other hand, learned Counsel for Accused would justify the impugned order by stating that, there was apparently no material to connect the Respondents herein in above crime and, therefore, learned Trial Court has rightly given the benefit of discharge.

6. Here, there is challenge to grant of discharge as prayed under Section 227 by present Respondents, who were arraigned as Accused nos. 2 and 3. In the line of above submissions, copy of charge-sheet is sifted by limited purpose of ascertaining whether there was or

no material for extending the benefit of discharge.

7. Papers show that, informant's husband Avinash, who was said to be a driver, had left the house on 03.01.2023 to visit his brother Rahul Kisan Salve at Mhada Colony. He did not return and, therefore, on due search, when he was not found, missing was lodged at Kranti Chowk police station on 17.03.2023, which was registered vide no.18/2023. However, on 15.02.2024 after 11 months or so, informant reported that, her husband was kidnapped by Rahul @ Balya Kisan Salve. On strength of such statement, crime bearing no. 35/2024 seems to have been registered for offence. Two days thereafter on 15.02.2024 accused Rahul allegedly gave memorandum of disclosure while in custody of police that, on 03.01.2023, he took deceased on the motorcycle near the lake at Sudhakar Nagar at Dhule-Solapur Road and while under influence of liquor, there was quarrel between them and he assaulted deceased by means of *danda* and subsequently, stuff the body in a gunny bag and buried it in the pit.

Informant gave supplementary statement on 31.02.2024 that, on 12.02.2024 her brother-in-law Ashish brought Uttam Unhale to their house where he gave extra-judicial confession about committing murder of informant's husband and, therefore, police was duly informed. On the strength of which, there was addition of charge of Section 302,

201 read with Section 34 of the IPC.

After completion of investigation, along with Rahul, Kisan Sakharam Salve and Lata Ratan Unhale were also charge-sheeted by invoking Section 34 of IPC.

Accused nos. 2 and 3 preferred application Exhibit 28 urging to discharge them from the above crime, which was ultimately allowed and brother of deceased i.e. Revision Petitioner is disgruntled by the same.

8. Before adverting to merits of the case, it would be just and proper to spell out settled legal position while considering discharge application under Sections 227 and 228 of the Cr.P.C. It is fairly settled position that, at such stage, Court dealing with such application is merely expected to determine existence of *prima facie* material for proceeding to frame charge and make accused persons face trial. Material gathered during investigation is expected to be sifted with limited purpose to find out whether there are sufficient grounds to proceed against accused. Neither in-depth analysis nor meticulous analysis of evidence is expected at such stage. Thus, the only duty of Court is to ascertain whether there is *prima facie* material suggesting existence of essential ingredients for the offences, which are alleged to be committed.

Above position has been time and again reiterated since the cases of *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39; *Union of India v. Prafulla Kumar Samal and Another* (1979) 3 SCC 4, and a decade back in the cases of *Sajjan Kumar v. Central Bureau of Investigation* (2010) 9 SCC 368; *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460; *State of Tamil Nadu (By Inspector of Police Vigilance and Anti-Corruption) v. N.Suresh Rajan and Others.* (2014) 11 SCC 709; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148; and *Ram Prakash Chadha v. State of Uttar Pradesh* (2024) 10 SCC 651.

9. Going by the sequence of events, as are emerging from the charge-sheet, it is seen that, deceased Avinash, who was driver by the occupation, had left the house on 03.01.2023 and as he had not returned, initially missing was lodged on 17.03.2023 and thereafter on 15.02.2024 i.e. almost 11 months thereafter, informant wife leveled allegations against one Rahul @ Balya Kisan Salve. On the strength of which, charge under Section 364 IPC alone came to be applied against only Rahul Salve. It is during his arrest, police machinery seems to have obtained memorandum of disclosure under Section 27 of the Evidence Act on 17.02.2024, wherein, he allegedly gave disclosure that, due to previous dispute, on 03.01.2023 he initially took deceased on his

motorcycle initially to Kanchanwadi and from there on Dhule-Solapur Road and thereafter committed his murder and buried the dead body.

Thus, here, the investigating machinery claims to have secured memorandum of disclosure at the instance of main accused Rahul alone. Till this stage, neither wife of deceased nor anybody else named present Respondents to be accomplice of main accused Rahul in the above episode. Therefore, except disclosure statement by accused Rahul in custody of police, there nothing incriminating as regards to present Respondents is concerned.

10. Learned Counsel for Revision Petitioner had taken this Court to the supplementary statement of wife of deceased, wherein, she reported to police that, on information received from her relative Uttam Daulat Unhale, it has emerged that, her husband was initially kidnapped and done to death. She further reported that, on 12.02.2024 her brother in law Ashish Salve brought Uttam Daulat Unhale to their house and he reported the above act of Rahul and, therefore, she gave supplementary statement but it is apparently on 21.02.2024. Even in her supplementary statement, there is no reference or whisper about role played by present Respondents. On visiting statement of Uttam Daulat Unhale, from whom all claimed to have learned about murder of deceased, a statement which is also recorded at a belated stage i.e. on

28.02.2024, wherein, he stated about one day Rahul coming to his house, consuming liquor and giving extra-judicial confession.

Therefore, except memorandum of disclosure under Section 27 or except alleged extra-judicial confession, there is no incriminating material in the entire charge-sheet. Moreover, from the impugned order, it is emerging that, learned Trial Court has called for case diary from the investigating officer and he too informed the Court that except disclosure statement of accused no.1, there is no material against accused nos. 2 and 3. Resultantly, learned Trial Court, in the considered opinion of this Court, has not committed any error in allowing the application of present Respondents for discharge. Apparently, case is based on circumstantial evidence, sequence and chain of circumstances is not shown to be getting complete against present Respondents, who are accused nos. 2 and 3, on the contrary, there is no material, incriminating or even otherwise to connect them with the death of deceased Avinash. Thus, there being no merit in the application, the same deserves to be dismissed. Hence, I proceed to pass following order:

### **ORDER**

The Criminal Revision Application stands dismissed.

**(ABHAY S. WAGHWASE, J.)**

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