

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1358 OF 2021

Pathan Ismail Khan S/o. Ibrahim Khan
Age: 55 years, Occu.: Puncture Shop,
R/o. Mastan Shah Nagar,
Hingoli.

..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Secretary,
Health Department,
The State of Maharashtra,
Mantralaya, Mumbai.
3. The Commissioner,
The Commissionerate of Health Services,
Arogya Bhavan,
Mumbai.
4. The Inspector General of Police,
The Office of Inspector General of Police,
Mumbai.
5. The Special Inspector General of Police,
Nanded Division,
Nanded.
6. The Superintendent of Police
The Office of Superintendent of Police,
Hingoli.
7. The Dean,
Dr Shankarrao Chavan Medical
College and Hospital,
Vishnupuri, Nanded.

8. Mr.Pandit Kachwe
The Police Inspector,
City Police Station, Hingoli.
9. Dr.A. N. Kalyankar
Residence,
Department of Forensic Medicine,
Dr. Shankarrao Chavan Medical
College and Hospital,
Vishnupuri, Nanded.
10. Dr. R. S. More
Residence,
Department of Forensic Medicine,
Dr. Shankarrao Chavan Medical
College and Hospital,
Vishnupuri, Nanded.

**(As per Court order date 13-06-2022,
Respondent Nos.7, 9 and 10 are
deleted.)**

11. Bharat S/o. Shankar Yadav
Age: Major, Occu.: Nil,
R/o. Mastanshah Nagar, Hingoli,
Cont. 8766844418
12. Rohit S/o Raju Yadav
Age: Major, Occ.: Nil,
R/o. House No.254, Mastanshah Nagar,
Hingoli.
Cont. 9075706121
13. Somnath @ Akshay S/o. Ashok Chandanshiv
Age: Major, Occ.: Nil,
R/o. : House No.256, Mastanshah Nagar, Hingoli.
Cont.: 9834606757
14. Vitthal S/o. Vishnu Chandanshiv
Age: Major, Occu.: Nil,
R/o.Gali No.3, House No.1/49,
Pensionpura, Hingoli.

15. Munna S/o. Premlal Yadav
Age: Major, Occu.: Nil,
R/o. Gali No.7, House No.1/43,
Pensionpura, Hingoli,
Cont. 7775979111

..Respondents

...
Mr. Saeed S.Shaikh, Advocate for Petitioner.
Mr. S. D. Ghayal, APP for Respondents-State.
...

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 10 APRIL 2023

JUDGMENT (ABHAY S. WAGHWASE, J.) :

1. Father of deceased Irfan Khan has invoked the provisions of Articles 14, 21 and 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure (Cr.P.C.) for following principal prayers:

“B. By issuing Writ of Certiorari/Mandamus or any other Writ, order or directions in the like nature, the Respondent Nos.1, 4 to 6 and 8 be directed to register the Crime, as per the Representation / Complaint dated 27.10.2021 of the Petitioner, against the Accused / Respondent Nos.11 to 15 and their accomplices for committing brutal Murder of the Petitioner’s son Irfan Khan.

C. By issuing Writ of Certiorari/Mandamus or any other Writ, order or directions in the like nature, the Respondent Nos.1 to 7 be directed to constitute a Special Investigative

Team to conduct Impartial and Fair Investigation in the murder of Petitioner's son Irfan Khan and take necessary action against guilty Police and Medical Officials i.e. the Respondent Nos. 8 to 10 and their accomplices for covering up the matter and trying to give clean chit / safeguard the Accused / Respondent Nos. 11 to 15 and their other accomplices.

D. By issuing writ of Mandamus or any other writ or order or directions in the like nature, the Respondents be directed to provide appropriate compensation to the Petitioner family.”

FACTS GIVING RISE TO THE WRIT PETITION

2. Deceased Irfan left house in the afternoon of 30.09.2021 to enjoy a party alongwith his friends. However, he did not return and therefore, petitioner/father undertook search and inquiry. As the same yielded nothing concrete, he approached police station and lodged missing report. According to the petitioner, when he made inquiry with friends of his deceased son, it was learnt that his son Irfan got drowned into the river water. Father suspected something foul as said friends of deceased were evading answers. Finally, the dead body of his deceased son was found floating in the flowing river

namely, Kayadhu. After the dead body was fetched out, it was revealed that there were several injury marks on the person of his deceased son along with blisters. Therefore, he became more suspicious and objected to the postmortem at the hands of Rural Hospital, Kalamnuri and rather insisted for postmortem at Nanded which was a higher center. However, on conducting postmortem, the doctors at Nanded issued postmortem report opining that death was due to drowning. Such opinion was not acceptable to the petitioner. Therefore, he made a complaint to the higher authorities raising grave suspicion about manner of death.

According to him, death was not at all due to drowning, rather in his opinion, it was a case of murder. There was previous enmity between his son and his friends. According to him, his son was done to death and thereafter his dead body was thrown into water. He alleged that his son knew swimming and so he could not have died a drowning death. Secondly, there were injury marks and blisters, of which there was no finding by the autopsy doctors. He alleged that matter was tried to be hushed up and therefore, when there was no response from the police authorities, he has knocked the doors of this court with above prayers.

RIVAL SUBMISSIONS

3. Learned counsel for the petitioner pointed out that there was previous enmity between deceased Irfan and the boys of his locality. Those boys, who are now suspects, had invited deceased for party. That, hot oil was poured on deceased Irfan. It has resulted into several blisters. After committing murder, dead body was thrown in the water. Initially when inquiry was made with suspects, they evaded to give proper answers. Subsequently, when taken into confidence, they put up a case of drowning. According to learned counsel, as deceased knew swimming, he cannot die due to drowning. There was no much water in which deceased could have drowned. Death is suspicions. There are several injury marks. However, succumbing to some pressure, doctors have issued wrong opinion. Police machinery is also hand in gloves with the suspects. False and incomplete charge sheet has been forwarded. That, in view of allegations and grave suspicion, a detail and fair investigation is necessary and hence he prays to allow the writ petition.

4. We have also heard learned APP, according to whom suspicion entertained by the petitioner is baseless. That, thorough investigation revealed that deceased, who was drunk, went for swimming and got

drowned. The medical experts have been consulted and after postmortem, pathological examination was got done. The opinion is consistent about death due to drowning. That, investigation did not reveal any foul play or improper investigation as is alleged by the petitioner and for all above reasons, he prays to dismiss the writ petition.

5. In the light of allegations raised in the petition, we have examined the papers before us with complete circumspection.

Record shows that police machinery has filed a report for grant of summons on 27.06.2022. On carefully going through the record, it seems that after leaving house in the afternoon of 30.09.2021, deceased Irfan did not return home leading to lodgment of missing report. His dead body was fished out of water on 02.10.2021 and after inquest, it was referred to postmortem. After conducting postmortem in the evening, doctors have opined death due to drowning as a provisional cause of death certificate and preserved viscera for histopathological examination. After receipt of histopathological examination report, it seems that final cause of death is issued.

6. As stated above, petitioner/father is alleging murder of his son Irfan by pouring hot oil. He points to the blister marks and injuries on the dead body of his deceased son and is doubting the opinion of autopsy doctors regarding death to be due to drowning. Our attention is specifically invited by learned counsel for the petitioner to the coloured photographs annexed with the petition, i.e. on the point of injury marks and blisters and affidavits of some persons.

7. Respondent no.8 Police Inspector, Hingoli City Police Station, District Hingoli, has placed on record his own affidavit refuting the contentions raised by the petitioner in writ petition. Its sum and substance is that, neither deceased Irfan nor his father had ever approached police station and made any complaint about any previous enmity between deceased and his friends. That, after missing was reported on 01.10.2021, inquiry was conducted with suspects and said inquiry revealed that it was deceased who had called suspects for enjoying party. That, CDR report reveals the same. That, on the bank of river Kayadhu, they consumed liquor and thereafter went for swimming. Deceased, under influence of liquor, jumped in the river water and got carried away by the flow of water. All statements are consistent with such theory. Therefore, it is accidental death. Even postmortem findings are about death due to drowning.

Pathological examination has ruled out poisoning. According to this respondent, the injury marks on the person of deceased are due to nibbling by aquatic animals. In para 10 of the affidavit-in-reply, this respondent has deposed that as a police station in-charge, he has discussed the incident with all his higher officials and briefed them about history. After discussing the incident with them, they directed him to register Accidental Death case and on such orders, he registered A.D. He claims that he has not noticed any material /evidence showing death of son of petitioner as homicidal one or suspicious one.

8. In this petition, provisions under Article 226 of the Constitution of India and Section 482 of Cr.P.C. have been invoked for above discussed reliefs. It is fairly settled by plethora of legal pronouncements as to when inherent powers under Section 482 of Cr.P.C. can be invoked. Here, petitioner is alleging unfair and unjust investigation regarding death of his deceased son.

Law is also fairly settled and there is no dispute about legal preposition that there has to be fair and just investigation. Police machinery owes both statutory duty and a public duty to carry out fair investigation to un-reveal the truth, i.e. by bearing in its mind the

rights of citizens as contemplated under Articles 19 and 21 of the Constitution of India. Rights and liabilities of not only complainant party but even rights of accused as well as victim are to be borne in mind while carrying out investigation. In short, a just balance has to be struck between rights of both complainant party as well as victim. There are various judicial pronouncements dealing with above aspect of fair investigation and powers of this Court while entertaining writ petition under Article 226 of the Constitution of India and Section 482 of Cr.P.C. A few landmark cases that could be named are as under: *Vineet Narain v. Union of India and another* ; (1998) 1 SCC 226, *Union of India and others v. Sushil Kumar Modi and others* ; (1998) 8 SCC 661, *Popular Muthiah v. State represented by Inspector of Police* ; (2006) 7 SCC 296. Even very recently in the case of *Devendra Nath Singh v. State of Bihar and others* ; (2023) 1 SCC 48, law on the point of scope and object of Sections 173(8) and 482 of Cr.P.C. has been succinctly reiterated and dealt with. Law is also loud and clear that High Court has inherent power under section 482 of Cr.P.C. to direct further investigation and if required, even re-investigation.

9. In our opinion, when suspicion or doubt is raised regarding manner of investigation, the investigating machinery is expected to be

cautious in its approach and is expected not only to routinely investigate the crime, but also should attempt to dispel the suspicion or doubt raised, if any.

10. Petitioner, in support of his case about death to be not by drowning, has placed on record coloured photographs of dead body after it was allegedly retrieved from the water. To the naked eye, one does come across numerous blister marks on the dead body of Irfan. Even noting to that extent is taken by both autopsy doctors in the postmortem report authored by them. Father has specifically alleged that hot oil was thrown on the person of his deceased son before allegedly being thrown in water. Therefore, under such circumstances it was expected of the investigating machinery to seek clarification from the medico legal experts regarding the blister marks and injury marks which apparently are numerous in number. It does appear from the communication of the Investigating Officer dated 5.10.2021, that he has raised queries to the autopsy doctors to opine about the cause of blisters. Under such circumstances, medical authorities were expected to respond to such queries raised by the Investigating Officer. We have examined the entire investigation papers but there does not seem to be anything in black and white form the side of medico-legal experts regarding their opinion about blisters.

11. Secondly, at the time of autopsy when viscera was preserved, it was also expected of the autopsy doctors to preserve the skin sample for examination and opinion about cause of blisters on the skin. Admittedly, no skin sample has been preserved as is evident from the postmortem report.

12. We have also noticed here that, when it was a case of alleged death by drowning and dead body being fished out of river water, sample of the river water was expected to be taken and preserved for further analysis. According to medical jurisprudence, there are several sure signs of drowning like water entering the lungs, inner ears, abdomen, which are helpful and handy clues to reach to a definite finding about cause of death. There is no concrete opinion about death to be only due to drowning and not otherwise.

13. We have also noticed here that deceased allegedly went missing since the evening of 30.09.2021. Information about drowning was given by suspects at a belated stage. Dead body was traced few kilometers away from the spot where deceased went with suspects. Body was admittedly fetched out of the water on 02.10.2021 and thereafter postmortem was done at about 6.40 p.m. on the same day.

However, it appears that viscera, which was preserved on 02.10.2021, was sent for pathological examination on 04.10.2021 i.e. after two days. The C.A. reports are allegedly issued on 24.12.2021 and 14.02.2022, however, surprisingly final cause of death is issued on 02.06.2022 i.e. almost after eight months.

14. Here, prayers are for constitution of special investigation team to conduct impartial investigation as well as to register crime. However, such prayers cannot be considered unless there is sufficient material to draw any concrete conclusion about improper, deliberate or impartial investigation and there is *prima facie* involvement of so-called suspects, who are friends of deceased Irfan.

But here, in the light of above discussion, we are convinced that investigation has not been taken to the logical end to rule out homicidal death as is alleged by the father/petitioner. Opinion about cause of blisters and several injury marks has not been gathered by investigating officer in spite of raising query to that extent and summary has been filed. Resultantly, in the light of above, petitioner succeeds to that extent and we accordingly proceed to pass following order:

ORDER

- I. The criminal writ petition is partly allowed.
- II. The Investigating Officer is directed to carry out further investigation and file charge sheet/report under Section 173(8) of Cr.P.C. with regard to medical opinion on the point of injuries and blisters on the person of deceased Irfan Khan Ismail Khan Pathan who met death on 30.09.2021 by seeking opinion on the point of exact cause of death.
- III. The criminal writ petition is disposed of.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

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