

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 390 OF 2015

Smt. Hamida Amir Ali Khoja & Ors. .. Petitioner

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. Prakash Naik i/b Ganesh Bhujbal for the petitioner
Mr. K.V. Saste, APP for the respondent State

**CORAM: RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.
DATED: 8th APRIL, 2015.**

P.C.

1. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India to seek direction to transfer the investigation of C.R. No.I-97 of 2014, registered with Palghar Police Station for the offence punishable under Sections 307, 326, 324, 325, 427, 504 r/w 34 of the IPC. The transfer of investigation is claimed on the ground that police are hand in gloves with the accused person and the crime is not properly investigated.

2. We have perused the petition along documents annexed to the petition. The alleged incident occurred on 5th July, 2004. The petitioner had given report on the same day. However, the same was registered as non-cognizable complaint. This N.C. was registered despite the fact that the victim has sustained fractures and head injury.

3. The petitioner thereafter was constrained to file an application under Section 156 (3) of the Cr.P.C. and it is only in pursuance of the order of the Magistrate, FIR came to be registered. The record reveals that after registration of the N.C. complaint on 5th July, 2004, the statement of the victim i.e. petitioner's son, was recorded on 6th July, 2014 wherein attempt appears to have been made to indicate that the injuries are accidental. We fail to understand having registered the N.C., what was the occasion for investigating agency to record the statement of the victim i.e. son of the petitioner. One Mr. Deepak Salunkhe, Asst. Police Inspector has filed an affidavit-in-reply. We have perused the same. In paragraph 16 (i) of the affidavit, it

is stated that the spot panchanama was conducted wherein no such bamboo or iron rod was found on the spot. The said panchanama was conducted on 22nd August, 2014 i.e. much after the incident in question which alleged to have been occurred on 5th July, 2014. Hence, non-finding of the weapons at the scene of offence was not relevant. That apart, there is a delay in recording the FIR. From the perusal of the petition and the affidavit, it is clear that attempts are being made to protect the accused. We are, therefore, inclined to allow the petitioner's prayer to transfer the investigation to some other investigating agency.

4. The petition is accordingly allowed. The investigation of the C.R. No. I-97 of 2014 is transferred to the Local Crime Branch, Palghar. The concerned investigating officer shall handover all the investigation papers to Local Crime Branch, Palghar as expeditiously as possible.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)