

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 628 OF 2015

Vijay Suresh Jadhav
age 35 years, occ. Labour
r/o Chalisgaon,
dist. Jalgaon

.. PETITIONER

VERSUS

The State of Maharashtra
Through the Principal Secretary,
Home Department, Mantralaya
Mumbai 32
AND
Police Station Officer
Chalisgaon,
Dist. Jalgaon

.. RESPONDENTS

Mr. R.R. Mantri, advocate instructed by Mr. B.A. Agrawal, advocate for petitioner.

Mr. M.M. Nerlikar, APP for the State.

=====

**CORAM : R.M. BORDE &
K.L. WADANE, JJ.**

RESERVED ON : 1st APRIL, 2016.

PRONOUNCED ON : 7th JUNE, 2016.

JUDGMENT : (PER R. M. BORDE, J.)

1. Heard Mr. R.R. Mantri, learned counsel instructed by Mr. B.A. Agrawal, learned counsel for the petitioner and Mr. M.M. Nerlikar, learned APP for the State.

2. Petitioner is praying for issuance of writ of mandamus or any appropriate writ or order or direction to respondents to handover investigation in respect of Crime No. 184/2010 registered at Chalisgaon Police Station for offence punishable under sections 302, 363, 143, 147 to

149, 201, 120-B, 506(2), 279, 337, 304-A etc. to Central Bureau of Investigation or any other such agency as may be deemed fit.

3. Petitioner contends that deceased Raju Suresh Jadhav was his real brother. Petitioner and his deceased brother were involved in Crime No. 183/2010 registered at the instance of Gautam Jadhav on the allegations that accused lodged assault on the person of Gautam. Petitioner and his brother were charged for commission of offence punishable under section 307 of the Indian Penal Code for attempt of murder of Gautam. After registration of crime, his brother Raju fled to Kalyan. Petitioner also went in hiding at Nasik. He returned to Chalisgaon by train however, at the railway station, he was accosted by accused belonging to the party of Gautam. While he was under illegal custody of accused, he received a mobile call from his brother late Raju. Accused persons belonging to the group of Gautam came to know whereabouts of deceased Raju. Petitioner was forcibly taken by the accused to Kalyan. They caught hold of Raju, beat him and brought him to Chalisgaon in private vehicle. It is alleged that as a result of severe beating administered to Raju, he suffered serious injuries. He was taken to various hospitals however, ultimately, he died. Accused persons, in order to demonstrate that death of Raju is accidental one, tried to create evidence in that regard. Police were also misled by the accused persons and were made to believe that it is a case of accidental death. According to petitioner, police investigating into the crime were hand in gloves with accused and, forwarded A summary report to the Judicial Magistrate First Class. Petitioner approached higher police authorities and

tried to impress upon them that it is a case of murder at the hands of accused belonging to the group of Gautam. After persuasion by the complainant, crime came to be registered against accused persons. Accused were however successful in securing anticipatory bail from the High Court. Petitioner apprehends that the police authorities are not likely to conduct investigation in proper manner. Petitioner as such prays for issuance of direction to the Central Bureau of Investigation to investigate into the crime and submit report.

4. On 26.06.2015, this Court directed the Superintendent of Police, Jalgaon to remain present before the Court on 10th July, 2015. The Superintendent of Police was directed to file reply. This Court was not satisfied with the affidavit presented by the Superintendent of Police and, as such, by order dated 19.08.2015, he was directed to file further affidavit. Vide order dated 06.10.2015, this Court granted rule in the matter and prescribed the same for final hearing.

5. Criminal application bearing no. 1589/2016 has been presented by petitioner praying for direction to stay the proceeding of Sessions Case No. 111/2015 pending on the file of Sessions Court at Jalgaon, arising out of Crime No. 184/2010 registered at Chalisgaon Police Station, till decision of the instant criminal writ petition. Criminal application bearing no. 5160/2015 has been presented by petitioner requesting the Court to take on record video CD presented alongwith the application. According to petitioner, investigation into the crime by police authorities is biased.

Statements of witnesses have not been recorded in the manner as told by them to the police. Petitioner contends that he is successful in securing video recording of the statements disclosed by witnesses to police. It has been stated in the application that statements of witnesses annexed to the charge-sheet are not as has been deposed by the concerned witnesses. Petitioner apprehends that since police investigating into the matter have not recorded statements in the manner as deposed by the witnesses, there is no likelihood of fair trial and, in all probabilities, the accused are likely to get benefit. Criminal Application no. 4616/2015 is presented by one Gautam Jadhav seeking his intervention in the criminal writ petition. It is not a matter of dispute that police have completed investigation and presented charge-sheet to the Court of Magistrate. The case being triable by the Court of Sessions has been committed to the Sessions Court at Jalgaon. Petitioner contends that investigation into the matter is not fair and that the accused are likely to secure advantage. It is also contended that the real culprits have not been roped into the crime.

6. Section 319 of the Code of Criminal Procedure authorises the Court to proceed against the other persons appearing to be guilty of the offence. It is provided that where in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. It would be open for the petitioner or the prosecution to urge to the Court to implead the person who

appears to have committed an offence by invoking powers under section 319 of the Code of Criminal Procedure. The Court also can direct further investigation into the matter, if needed. Section 311 of the Code of Criminal Procedure empowers the Court to summon any person as witness or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined. Section 311 also empowers the Court to summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

7. In the facts and circumstances of the case, it would be open for the petitioner to make appropriate application to the Court of Sessions before whom the trial in respect of the offence is prescribed. In the facts and circumstances of the case, since the case is committed to the Court of Sessions and trial is also likely to proceed, keeping the option to tender necessary application and make appropriate prayers within the framework of the provisions of Code of Criminal Procedure 1973, open for the petitioner, instant petition can be disposed of. Writ petition accordingly stands disposed of with liberty as aforesaid. Rule is discharged. In view of disposal of writ petition, nothing survives in the pending criminal applications and those also stand disposed of.

(K.L. WADANE)
JUDGE

(R. M. BORDE)
JUDGE