

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

**CRIMINAL WRIT PETITION NO.1414 OF 2016
WITH
CRIMINIAL APPLICATION NO.5249 OF 2017**

Yusuf Khan s/o. Hussain Khan
Age: 68 years, Occu.: Business,
R/o.Roza Bagh, Harsul Road,
Aurangabad.

..Petitioner

VERUS

- 1) The State of Maharashtra
- 2) Firoza w/o Fazal Patel
Age: 34 years, Occu.: House Wife,
R/o.Mulla Galli, Harsul,
Aurangabad.
- 3) Fazal s/o Sikandar patel
Age: 35 years, Occu.: Business,
R/o.Presently at Yerwada Hospital,
Pune.
(Through his Wife)

..Respondents

...

Advocate for Petitioner

APP for Respondent No.1

Advocate for Respondent Nos.2 & 3

: Mr.Sagar S.Ladda

: Mr.K.S.Patil

: Mr.R.S.Deshmukh &
Mr.A.K.Bhosale

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CORAM : PRAKASH D.NAIK, J.

JUDGMENT RESERVED ON : 22nd NOVEMBER, 2017

JUDGMENT PRONOUNCED ON : 22nd DECEMBER, 2017

JUDGMENT:-

1) The petitioner challenges the order dated 28.9.2016 passed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.300 of 2013.

2) The petitioner is the father of deceased Mohd.Hussain. The FIR was lodged with Begampura Police Station vide Crime No.I-48 of 2013 for an offence u/s 302 r/w 201 of the Indian Penal Code. The husband of the respondent No.2 Fazal Sikandar Patel was accused. The Police completed investigation and filed a charge-sheet. The petitioner's son was murdered on 7.4.2013. The accused surrendered by preferring an application on 9.5.2013 and since then he is in custody.

3) The broad factual aspects are as follows:-

(i) The accused has filed Regular Bail Application

bearing No.1031 of 2013 before the Court of District and Sessions Judge, Aurangabad. The said application was rejected on 17.8.2013.

(ii) The case was committed to the Court of Sessions and at the time of committal Court asked accused Fazal whether he wanted a lawyer and he stated that he has engaged a private lawyer and signed on the committal form.

(iii) After rejection of the regular bail, accused approached this Court and filed an application for bail bearing No.461 of 2014. The same was withdrawn.

(iv) On 24.2.2014 the accused preferred an application before the Trial Court u/s 330 of Code of Criminal Procedure. In the said application, it was contended that he is suffering from mental disease since several years and he is also suffering from psychological disorders. The application was rejected

on 25.9.2014.

(v) The accused preferred an application No.6050 of 2014 before this Court challenging the order dated 25.9.2014. The said application was allowed by this Court vide order dated 19.12.2014 and the matter was remanded to the Trial Court with a direction to follow the procedure of Chapter XXV of the Code of Criminal Procedure.

(vi) The Trial Court thereafter, made an enquiry in respect to unsoundness of the accused. The Medical Superintendent of Regional Mental Hospital, Yerwada, was called as Court witness. His evidence was recorded and opportunity was given to the prosecution and the accused to cross-examine. Several facts were brought on record by prosecution to show that the accused is of sound mind. Medical reports were produced before the Court. The evidence of Dr.Bhalchandra Donglikar, who is Medical

Superintendent of Yerwada was also recorded and the Trial Court vide order dated 25.2.2016, came to the conclusion that accused is of sound mind and fit for trial.

(vii) The respondent No.2 approached this Court by preferring Criminal Application No.1398 of 2016. In the said application, after hearing the respondent Nos.1 and 2 and the petitioner, the Court vide order dated 22.4.2016, again remanded the matter back to the Trial Court to consider all the evidence and medical papers, which is on record as well as examine Dr.Gosawi, who was treating Doctor to the accused in Regional Mental Hospital, Yerwada.

(viii) The Trial Court recorded the evidence of Dr.Gosawi and opportunity was given to the accused and the prosecution to cross-examine. In the cross-examination, several facts were brought on record, which indicates that the accused is not of unsound

mind and is fit for trial.

(ix) The Trial Court passed an order dated 28.9.2016 declaring that the accused is of unsound mind and is incapacable of making his defence. It was also observed that further proceedings in this case needs to be postponed as per Section 329 of the Code of Criminal Procedure.

4) The petitioner challenges the order dated 28.9.2016 on several grounds. It is submitted that the Court committed error in overlooking the evidence on record and other material. The order passed by the Sessions Court is bad in law. It is submitted that for first time the accused filed an application u/s 330 of Code of Criminal Procedure before the Trial Court on 24.2.2014. In the said application in paragraph 8, it was mentioned that he is taking treatment for mental disease and suffering from psychological disorders since last many years. It is submitted that the assertion is false since it was not

brought to the notice of the Court at the earlier point of time when he surrendered in Crime No.48 of 2013. He had signed the said application and the Vakalatnama, which shows that he is of sound mind. The accused preferred an application for bail in which there was no reference of his ailment of mental disorder. He had also filed petition for restitution of conjugal rights. In the say filed by wife of the accused in the said proceedings, she did not disclose that accused is suffering from mental illness. The grievance was made for the first time on 24.2.2014. The accused and his wife has filed a compromise deed on 8.12.2014 before the Family Court in relation to the proceedings for restitution of conjugal rights, which was signed by the accused. There was no reference of ailment in the consent deed. In paragraph 1 of the consent deed, it was stated that accused is behind the bar and that he was not pressurized by anyone to execute the settlement deed. Therefore, he was of sound mind. He did not take that defence in earlier proceedings. He is holding bank

account and using credit card. It is submitted that after recording evidence of Medical Superintendent and medical papers produced by Medical Superintendent, the Trial Court came to the conclusion that accused is not person of unsound mind and he is fit for trial. When the matter was remanded for recording the evidence, except evidence of Dr.Gosavi, there was no new material to consider the claim of the accused. The Court, however, allowed the said application. The accused had purchased a Car by obtaining loan from the bank and he has issued cheques in that regard. He had contested the proceedings under the Motor Vehicles Act. It is submitted that Dr.Gosavi in her cross-examination did not state any symptoms of Schizophrenia in accused during medical examination. There was no impairment in his memory. She also stated that accused himself stated the history of illness for which treatment was given to him. The accused was used to do his own pursuits. It is submitted that the order passed by the Sessions Court therefore, deserves to be quashed and set aside.

5) The learned counsel for the petitioner pointed out the relevant documents in support of his aforesaid submissions, which is part of compilation placed before the Court. It was also pointed out that the accused was prosecuted for the same offence vide case No.1841 of 2012, which had resulted in acquittal. There was no defence of mental disorder in the said trial. The Judgment was delivered on 25.9.2012 acquitting the accused. There were several cases registered against him. The learned counsel pointed out the evidence of Dr.Bhalchandra Donglikar recorded by the Sessions Court during the enquiry. The said witness has given certain admissions. Recording of the evidence of the said witness was completed on 8.2.2016. The learned counsel also pointed out the evidence of treating Doctor i.e. Dr.Yogita w/o.Ramchandra Gosavi, who is Medical Officer, Regional Mental Hospital, Yerwada, Pune. She has stated that as per her observation, the accused had elementary hallucination and idea of persecution. The Doctor has

not observed senseless conduct of the accused. She did not observe that the patient has ever exhibited disordered thinking. The accused was taking food regularly. She has deposed that the activities of the accused were not normal. He was suffering from simple symptoms of Schizophrenia.

6) The learned counsel submitted that inspite of the aforesaid circumstances and although there were no changes in the circumstances after the case was remanded back to the Court, the Sessions Court has passed the impugned order, which has to be set aside.

7) The learned counsel for the respondent Nos.2 and 3 opposed the reliefs sought by the petitioner. It is submitted that the Sessions Court has considered all the material on record including medical reports and has passed the impugned order. It is submitted that the Court has perused the documents on record and thereafter has arrived at the conclusion stated in the impugned

order. The petitioner has no locus to challenge the said order. He is neither the complainant nor the eye-witness of the incident. The accused is facing prolong mental health complexities. He is suffering from Schizophrenia and Cannabis Abuse. The medical experts opined that he is suffering from Paranoid Schizophrenia. It is submitted that the Court by its earlier order dated 19.12.2014, directed scrupulous implementation of provisions of Chapter XXV of the Code of Criminal Procedure. The accused was sent to Regional Mental Hospital, Pune in pursuant to the directions dated 12.5.2015. He was examined at Regional Mental Hospital, Pune and reports were submitted. The reports were consistent on the points of indoor medication and the accused is incapable of making his defence on account of unsoundness of mind. The respondent Nos.2 and 3 filed the reply and placed on record the medical reports. It is submitted that the report of Visitors' Committee dated 15.10.2015 indicates that the accused is of unsound mind. He is unfit for trial and unfit for discharge. He

continues to be under treatment. The report was forwarded by Regional Mental Hospital, Pune to the Sessions Court. The learned counsel also submits that the report dated 21.12.2015 with regards to the opinion of the Visitors' Committee, who has examined the accused on 19.12.2015 also indicates that the accused is of unsound mind and is unfit for trial.

8) It is submitted that prior to the aforesaid admission of the accused he was admitted to the Government Mental Hospital, Nagpur. The report of the said hospital is also placed on record. It is submitted that the Government Medical College and Hospital, Nagpur in its report dated 17.6.2014 indicated that the accused was medically examined and it is noted that he is suffering from Schizophrenia with past history of Cannabis Abuse. The ailment is of serious nature. The counsel also placed on record the other medical case papers from the Department of Psychiatrist, which also indicate that the accused had shown abnormal behaviour.

It is further submitted that subsequent to the order passed by this Court, the enquiry was held and accused was declared to be fit for trial, which order was set aside by this Court vide order dated 22.4.2016 and the Court was directed to conduct enquiry. It is submitted that Paranoid Schizophrenia is specified in DSM-IV and ICD-10. The symptoms frequently observed in a patient similar to symptoms reported in Mental Hospital in respect of accused. The abstract of report of their Psychiatrist were annexed to the reply. It is further submitted that the enquiry conducted by the Trial Court clearly states that the accused is of unsound mind and incapable of making his defence. It is therefore submitted that the petition may be dismissed.

9) I have perused the documents on record. It has seen that earlier application u/s 330 of the Code of Criminal Procedure was rejected on 25.9.2014. The said order was challenged before this Court by preferring Criminal Application No.1398 of 2016. The matter was remanded

back to the Trial Court vide order dated 19.12.2014 for following the procedure and for giving findings. The Sessions Court again gave report that the accused is of sound mind vide order dated 25.2.2016. The respondent No.2 challenged the said order by preferring Criminal Application No.1398 of 2016. The Court vide order dated 22.4.2016, again directed Trial Court to enquire into unsoundness of mind. Thereafter, the impugned order dated 28.9.2016, was passed declaring that the petitioner is of unsound mind and cannot make defence.

10) Begampura Police Station filed charge-sheet against the accused u/s 302 and 201 of the Indian Penal Code. Accused surrendered and arrested on 9.5.2013. The accused was detained under MPDA Act. He was shifted to Nagpur Jail from Aurangabad. The detention order was passed on 26.8.2013. He was produced for medical examination in respect of his mental health before Medical Officer at Government Medical College and Hospital, Nagpur. The report dated 17.6.2014 was placed

on record before the Sessions Court, which discloses that the accused was suffering from Schizophrenia and he was in need of treatment as indoor patient in Psychiatric Hospital. The application as stated above u/s 330 was rejected on 25.9.2014 and the said order was set aside on 19.12.2014 and the matter was remanded back to the Trial Court. The Court set aside the order passed by Sessions Court below Exh.7 and Trial Court was directed to follow procedure and give finding. The Court observed that the Trial Court has not followed procedure under Section 329 of the Code to ascertain the unsoundness and incapacity of accused and finding is required to be given by Trial Court. At present, there is opinion of Medical Board showing that accused is suffering from Schizophrenia. Even thereafter, the Court rejected the application on 25.2.2016. The respondent No.2 preferred Criminal Application No.1398 of 2016, before this Court. While adjudicating the said application, it was pointed out the the accused was examined by experts of Mental Hospital, Yerwada and report dated 19.6.2015, 25.7.2015

and 27.8.2015, persistently suggest that accused is of unsound mind and needs long terms treatment. It was also submitted that report dated 27.8.2015 indicates that, patient would required family support and environment, which would be helpful for his speedy recovery. The prosecution however, submitted that report of Mental Hospital, Pune shows that accused is fit for trial. The Court in its order observed that after examination of accused, Doctor opined that accused is showing improvements in Psychiatric symptoms, and he need longterm treatment. Another report dated 23.7.2015, is also on same line. The Trial Court while passing order did not consider number of reports by experts. Voluminous documents containing 168 pages produced by Dr.Donglikar. Therefore, enquiry was not complete. The accused was referred to a Psychiatric Hospital. He was referred to the Regional Mental Hospital, Yerwada. Thus it is apparent that, the Court initiated enquiry and called for the report from the Medical Superintendent about the state of mental health of the accused. The

Court also summoned the Medical Officers. Dr.Bhalchandra Donglikar, Medical Superintendent, who has deposed before the Court as Court witness. The impugned order indicates that the Medical Officer produced on record a compilation of documents consisting of 168 pages containing notes of observations recorded during medical examination and treatment given to the patient. The Trial Court made an enquiry and recorded evidence of Dr.Yogita w/o Ramchandra Gosavi, who was treating accused from December 2015, till June 2016. Thereafter, the order dated 28.9.2016 was passed. It is therefore, crystal clear that the Trial Court conducted enquiry as per directions in the Order dated 22.4.2016.

11) The learned counsel for the petitioner had submitted that there is no sufficient evidence to come to the conclusion that the accused is suffering from Schizophrenia and is not fit to defend himself.

12) The Sessions Court while passing the impugned order

has heard the learned Special Prosecutor and the accused and after analyzing the material on record passed the order. The submissions advanced by both the parties are reflected in the said order. The Court analyzed the evidence of Dr.Donglikar and Dr.Gosavi. Dr.Donglikar is Medical Superintendent of Regional Mental Hospital, Yerwada, Pune. He deposed that the accused is suffering from Schizophrenia and showing improvements and needs longterm treatment and is unable to take defence. He was cross-examined on certain aspects and he also admitted the noting made by CW-2. Dr.Gosavi stated that the patient is fit for trial. The admissions given by the said witness, which were part of record and it is taken into consideration by the Trial Court after analyzing the evidence. However, the Court observed that there was no material available on record that Dr.Donglikar is interested in giving evidence in favour of accused. The Court further analyzed the evidence of Dr.Yogita. She is working as Medical Officer, Regional Mental Hospital. From December 2015 to June 2016, she is looking after

patient in Criminal Ward. she deposed that the accused is suffering from Schizophrenia. She stated that the accused had elementary hallucination and and idea of persecuation. She also stated that the Psychiatrist attending the patient used to put his report before the Visitors' Committee consisting of CJM Pune, Medical Superintendent, Deputy Medical Superintendent of Regional Mental Hospital, Pune, Psychiatrist from Jail and private Psychiatrist were taking decisions of fitness of the patient. She deposed that she had seen the improvements in the mental condition of the accused and submitted the report to Visitors' Committee that accused is fit for trial. She was cross-examined and she stated that in the observation sheet maintained by the Hospital, there was noting that the accused lost interest in the friends, he had other conflict etc. She stated that these are characteristics of simple Schizophrenia. She did not observe senseless activity and did not notice the accused exhibited disordered thinking and she did not observe violent behaviour. She also stated that there

was no impairment in his memory and the accused himself stated the history of illness and on the basis of it, treatment was given to the him. She also referred to the endorsement on the observation sheet that accused is fit for trial.

13) It is pertinent to note that the Trial Court analyzed the evidence of the witness in the proper perspectives.

14) The Trial Court further observed that while remanding the matter back to the said Court, the High Court has observed that the decision in regard to unsoundness of mind cannot be merely on the basis of information received from the Doctor, but it must be based on evidence and the entire material brought forth before the Court. The Court therefore considered the evidence of the Doctors stated above as well as the material on record filed by Dr.Donglikar, monthly reports received by the Court and copies of documents filed by

the informant alongwith list Exh.79. Therefore, it appears that the Trial Court has conducted enquiry and analyzed the issue involved in the matter by considering the evidence of witnesses as well as documents on record. Equal opportunity was given to both the sides. It is also pertinent to note that the documents relied upon by the prosecution to support the case that the accused is of sound mind were considered by the Court. In paragraph 20 of the impugned order it was stated that since 12.5.2015, the accused is in Regional Mental Hospital, Yerwada, Pune. The Court received the monthly reports regarding mental status of the accused. The Court also recorded date-wise report of the accused and impression recorded by the Doctor therein. It would be pertinent to embark upon the said impressions, which can be reproduced herein.

Sr. No.	Reports	Impression
01.	Report dtd. 19.6.2015	Patient showing some improvement in psychiatric symptoms. He needs further long term indoor management.

02.	Report dtd. 24.07.15, Exh.37	Patient showing some improvement in psychiatric symptoms. He needs further long term indoor management.
03.	Report dtd. 27.8.15, Exh.-40	At present, patient is missing his relatives and feeling lonely. He is on above said medicines. He will require long term treatment as well as family support/environment would be helpful for his speech recovery.
04.	Report dtd. 16.11.15, Exh.49	Patient showing improvement needs long term management. Presently he is not fit for trial.
05.	Report dtd. 16.12.15, Exh.54	Patient showing improvement with current medicines he needs long term management. He is fit for trial.
06.	Report dtd. 30.10.15, Exh.57	Patient showing improvement needs long term management.
07.	Report dtd. 22.1.16, Exh.58	Patient is showing some improvement with medication. Patient needs further long term treatment. He is VC unfit for trial. Patients psychological tests are going on at Sassoon General Hospital, Pune as advised by V.C.
08.	Report dtd. 26.2.16, Exh.60	Patient is on treatment. He needs further long term treatment. Currently psychometric testing are going on from Sassoon General Hospital, Pune.
09.	Visitors Committee Report dtd. 23.3.16, Exh-61	Patient is of unsound mind. He is unfit for trial and unfit for discharge. He continues to be under treatment.

10.	Report dtd. 23.3.15, Exh. 62	Unfit for trial.
11.	Report dtd. 14.3.16, Exh-63	Patient is on treatment. He needs further long term treatment. Patient will be kept before Visitors Committee for taking opinion for fitness for trial on 19.3.2016.
12.	Report dtd. 16.4.16, Exh-67	Patient is on treatment. He needs further long term treatment. Patient will be kept before Visitors Committee on 19.3.2016. He cleared as VC unfit for discharge.
13.	Report dtd. 12.5.16	Patient is on treatment. He needs further long term treatment.
14.	Visitors Committee Report dtd. 22.6.16, Exh-68	He is of unsound mind. He is unfit for trial and unfit for discharge. He continues to be under treatment.
15.	Report dtd. 07.7.16, Exh-75	Patient showing partial improvement with current line of treatment. He needs further long term treatment
16.	Report dtd. 20.8.16, Exh-77	1) Patient Fazal Sikandar Patel is admitted in Regional Mental Hospital, Pune & receiving above line of treatment and he is diagnosed of having Schizophrenia paranoid type. 2) He is showing partial/slow response to above treatment. 3) He needs further long term treatment.
17.	Report dtd. 01.09.16, Exh. 80	1) Patient Fazal Sikandar Patel is admitted in Regional Mental Hospital, Pune & receiving above line of treatment and he is

		diagnosed of having Schizophrenia paranoid type. 2) He is showing partial/slow response to above treatment. 3) He needs further long term treatment.
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The Regional Mental Hospital, Pune vide letter dated 19.6.2015 had intimated to Trial Court that the accused is admitted in Hospital on 12.5.2015. The medical reports were forwarded to the Court alongwith the case paper of treatment. Similar communication dated 19.6.2015, 25.7.2015, 27.8.2015 were sent to the Court with medical report, which refers to Elementary hallucination and Judgement and insight lacking. The Visitors' Committee report regarding visits of Committee on 15.10.2015, 19.12.2015, 19.3.2016, 18.6.2016, 17.9.2016 and 17.12.2016 were sent to the Trial Court. In all these reports, it is stated that accused is of unsound mind and unfit for trial. These documents are annexed to the reply filed by respondent No.2.

15) The impugned order further refers to the report dated 16.12.2015 Exh.54 wherein the impression is that

the patient is fit for trial. The Court observed that the Psychiatrist is not authority to take decision to discharge a person admitted in Psychiatric Hospital for medical treatment. Though the Doctor found the accused fit for trial vide Exh.54, the Visitors' Committee report dated 19.3.2016 and 22.6.2016 opined that the accused is of unsound mind and unfit for trial and unfit for discharge and he continues to be under treatment. Dr.Gosavi has already stated as to who forms the part of the Visitors' Committee and therefore, the report of the Visitors' Committee has significance. The Court therefore while passing impugned order on the basis of entire material has made observations in paragraph 22 that although the witnesses have stated that they did not observe the symptoms of ailments in the observation sheet and the report submitted to the Court, it is clearly stated that delusion of persecution auditory hallucination occasionally, the judgment lacking and insight lacking. Hallucination or hearing generally occurs in Schizophrenia, which is one kind of psychiatric

disorders. Report discloses that the accused has delusion or persecution which affects the conduct and action of sufferer. Delusion is a sign of psychosis. These symptoms were seen by experts. Unsoundness of mind can be decided by only expertise knowledge. Documentary evidence placed on record discloses that, the accused has mental illness. The evidence of expert witness and reports of Visitors' Committee show that the accused is a person of unsound mind and he is in need of longterm treatment as indoor patient. The Court thereby considers the oral evidence of expert and the other material and therefore came to the conclusion that the accused is of unsound mind and consequently incapable of making his defence. The Court therefore passed the order dated 28.9.2016 declaring that the accused is of unsound mind and incapable of making his defence. Hence, further proceedings of the case needs to be postponed as per Section 329 of the Code of Criminal Procedure. The Court also directed that after the accused ceased to be of unsound mind, Superintendent, Regional Mental Hospital,

Yerwada, Pune, to inform this Court for resumption of proceedings in this case.

16) Thus it is evident from the observations made by the Court that the entire material on record was taken into consideration. It is pertinent to note that the medical documents placed on record were taken into consideration by the Court and thereafter arrived at the said conclusion. I do not find any infirmity in the findings of the Court. After the matter was remanded back to the Trial Court, the said Court has applied its mind to the facts of the case, evidence was recorded, opportunity of cross-examination is given to the parties. They were allowed to produce documents, they were heard by the Court, and thereafter by giving cogent reasons, the impugned order was passed. There is no reason to interfere in the said order. The respondents had also placed on record the medical documents of Government Medical College and Hospital, Nagpur viz. Copies of report and discharge card of the accused, which also

indicate that the accused was examined by Doctors while he was undergoing the preventive detention and report dated 17.6.2014 indicates that the accused is suffering from Schizophrenia having mental imbalance, which is of serious nature. The discharge card states that he was admitted on 3.4.2014 and discharged on 17.4.2014. The diagnosis indicates Schizophrenia with past history of Cannabis Abuse. The discharge card also indicates that the patient is charge-sheeted before the Court for offence u/s 302 read with 34 of the Indian Penal Code. The medical papers relating to treatment, which are forwarded by the Regional Mental Hospital, are also placed on record.

17) Apart from the aforesaid report, based on the evidence on record, no case is made out to interfere with the order passed by the Trial Court.

18) The petitioner had preferred Criminal Application No.5249 of 2017 by making certain allegations against the

Police personnel and the Court had directed to look into the said complaints. The report is submitted to the Court stating that action is initiated against the concerned Police Officer for providing the accused food etc. The enquiry however indicates that while the accused was at Begampura Police Station, he was not approached by any of his relatives and no greetings were exchanged for Id and there was no party and there was no other celebrations, however, the brother of the accused had met him in the Court.

19) In the circumstances, I pass the following order:-

ORDER

(I) Criminal Writ Petition No.1414 of 2016 is dismissed and disposed of.

(II) Criminal Application No.5249 of 2017 stands disposed of.

[PRAKASH D.NAIK, J.]