

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

CRIMINAL WRIT PETITION NO.2157 OF 2017

Daphne Beatrice Sequeira Petitioner

vs

1.The State of Maharashtra

2. The Superintendent

Yerwada Central Prison

3. Sassoon General Hospital, Pune .. Respondents

Mr.Vijay Hiremath for Petitioner

Ms.S.D.Shinde APP for Respondent

CORAM: RANJIT MORE AND

SARANG V.KOTWAL, JJ

DATE: 16 JUNE, 2017

P.C.

1. Heard learned counsel for the Petitioner and the learned APP.

2. The Petition is filed for the following reliefs :

(a) that this Hon'ble Court may be pleased to issue a writ of mandamus or any order in the nature of writ of mandamus directing the respondents to hand over all the documents regarding the death of Eric Francis Sequeira, including the autopsy report, the inquest panchanama and the Magisterial enquiry report including the video recording of the autopsy;

(b) that this Hon'ble Court may be pleased to issue a writ of mandamus or any order in the nature

of writ of mandamus directing the respondents to preserve the dead body of Eric Francis Sequeira till further orders of this Hon'ble Court;

(c) that this Hon'ble Court may be pleased to issue an order appointing a panel of Forensic Doctors independent of any of the present respondents to conduct an autopsy on the body of Eric Francis Sequeira and submit the said report to the Hon'ble Court in a sealed cover;

(d) pending the hearing and final disposal of the petition issue a writ of mandamus or an order in the nature of writ of mandamus directing the respondents to hand over all the documents regarding the death of Eric Francis Sequeira including the autopsy report, the inquest panchanama, the Magisterial enquiry report including the video recording of the autopsy;

(e) pending the hearing and final disposal of the petition issue a writ of mandamus or any order in the nature of writ of mandamus directing the respondents to preserve the dead body of Eric Francis Sequeira till further orders of this Hon'ble Court;

(f) Pending the hearing and final disposal of the petition issue an order appointing a panel of Forensic doctors independent of any of the present respondents to conduct an autopsy on the body of Eric Francis Sequeira;

(g) interim and ad interim prayers in terms of prayer clauses (d) (e) and (f);

3. The learned APP on instructions submits that the

Petitioner's deceased husband was an accused in C.R.No.121 of 2014 registered with Koregaon Park police station, Pune. Initially, he was remanded to police custody and subsequently placed in magisterial custody. Since he complained of chest pain, he was admitted to Sasoon Hospital. However, he died on the same day at about 10.50 p.m.

4. The learned APP submitted that information of the death of the petitioner's husband was given to the Judicial Magistrate, First Class, Shivaji Nagar, Court No.2. Pune. The inquest panchanama was prepared and thereafter, the dead body of the deceased husband was taken to Sasoon Hospital under the supervision of Executive Magistrate where the post mortem examination was conducted by three doctors of Sassoon Hospital. She also submitted that an inquiry as contemplated under sub--section (1-A) of section 176 of the Code of Criminal Procedure, 1973 is undertaken by the Judicial Magistrate, First Class, Court No.5, Pune. She also submitted that time and again the petitioner was called upon to take possession of the dead body of her deceased husband. However, she has not

taken and instead the reliefs as aforesaid are prayed. In short, it is the case of the learned APP that since the Petitioner's husband died in the Magisterial custody, the mandatory requirements as contemplated under section 176 of the Code of Criminal Procedure, 1973 are duly complied with. The learned APP further stated that the documents which the Petitioner claimed are handed over to the petitioner's counsel during the pendency of the Petition and this fact is not disputed.

5. Learned counsel appearing for the Petitioner submits that the respondents have not complied with provisions of clause (5) of section 176 of the Code of Criminal Procedure Code, 1973 which reads thus :

176. Inquiry by Magistrate into cause of death:

(5) “ The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be under sub-section (1-A) shall within twenty-four hours of the death of a person forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in his behalf by the State Government unless it is not possible to do for reasons to be recorded in writing) ”

6. The report tendered by the learned APP across the

bar shows that the post-mortem examination on the dead body of the petitioner's deceased husband was carried out by Dr.A.L.Bandgar, Assistant Professor, Mr.H.V.Vaidya and Mr.S.K.Khurtana. She submitted that all these three doctors are qualified as M.D (Forensic) and they were initially appointed by the State Government. Therefore, the requirement of clause (5) of section 176 of the Code of Criminal Procedure, 1973 is complied with.

7. We are unable to agree with the submission of the learned APP. In terms of clause 5 of section 176 of the Code of Criminal Procedure, 1973 the dead body is required to be forwarded to the nearest Civil Surgeon or any other Medical Officer appointed in this behalf by the State Government. Admittedly, the dead body was forwarded to the Sassoon Hospital, Pune and not to the Civil Surgeon. We also do not find any material/document to show that the doctors referred above who carried out the post mortem examination on the dead body of the petitioner's deceased husband are specifically appointed by the State Government under section 176 (5) of the Code of

Criminal Procedure,1973.

8. In the above circumstances, in the interest of justice, without going into the correctness of the post mortem examination carried by earlier panel of doctors, we dispose of the Petition with the following order:

O R D E R

(a) The Yerwada police Station, Pune is directed to take possession of the dead body of the Petitioner's deceased husband from the Sasoon Hospital, Pune and forward the same to the Civil Surgeon, Aund, Pune who is stated to be the nearest Civil Surgeon;

(b) Under the supervision of the Civil Surgeon, a second post-mortem examination on the dead body of the Petitioner's deceased husband shall be carried out by qualified Forensic doctors in accordance with law;

(c) The Petitioner shall be given copy of the second post-mortem report carried on the dead body of the Petitioner's deceased husband along with the C.D.of video recording of said post-mortem;

(d) Once the second post mortem examination on

the dead body of the petitioner's deceased husband is carried out under the supervision of the Civil Surgeon, Aund, Pune the Petitioner shall immediately take possession of the dead body for performing the last rites.

(e) In the event the Petitioner fails to take possession of the dead body of her husband within one day after conducting the second post mortem examination the Yerwada police station, Pune/Respondent no.2 are at liberty to dispose of the same.

All concerned to act on an authenticated copy of this order duly attested by the Court Sheristedar.

(SARANG V.KOTWAL, J)

(RANJIT MORE,J)

