

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Writ Petition No.827 of 2016

(Krushnarao Raghoji Khandale
 vs.

Union of India, Ministry of Home Affairs, New Delhi and others)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri N.N. Thengre, Advocate for the Petitioner.
 Shri V.P. Maldhure, A.P.P. for Respondent Nos.3, 5 & 8.
 Shri Ganguly, Adv. with Shri C.R. Najbale, Adv. for Res.Nos.4 & 9 to 11.
 Shri S.M. Mishrikotkar, Advocate for Respondent Nos.12 & 15 to 17.
 Shri Asghar Hussain, Advocate for Respondent Nos.13 and 14.

CORAM : B.R. GAVAI AND
KUM. INDIRA JAIN, JJ.

DATE : MARCH 14, 2017.

By this petition, the petitioner has approached this Court for direction to the Central Bureau of Investigation (C.B.I.) to investigate into the matter of death of his son Vijay, as it is the case of the petitioner that respondent nos.12, 13 and 14 have committed murder of his son-Vijay.

02] The petitioner's son-Vijay was married to respondent no.12-Zarana on 02/07/2014. On 24/03/2016, it was decided by respondent no.13 that he along with his family, deceased Vijay and

respondent no.12 would go to Pachmarhi since there were holidays on account of 'Holi' festival. They started from the house of the petitioner at around 12:30 in the night after informing the petitioner. On the next day morning, they went to a hotel and after taking rest for some time, in the afternoon, they went for lunch to a Dhaba and thereafter they had gone to sight scene to Mahadeo Temple. However, in the Mahadeo Temple itself, deceased Vijay was feeling uneasy and he fell there. One doctor, who was also a tourist at the said place, tried to give preliminary treatment and advised to take the deceased to the doctor. Accordingly, Vijay was brought to Dr. Atul Jain at Pachmarhi by respondent nos.12, 13 and 14. The said doctor after examination found that deceased-Vijay died out of heart attack. Thereafter, with the assistance of Dr. Atul Jain, a vehicle was arranged for bringing the dead body of deceased to Nagpur. When the dead body was brought to the house of the petitioner at Nagpur, the petitioner said that the dead body be taken to the Hudkeshwar Police Station directly and only after conducting the

postmortem, the same be brought to home. Accordingly, the postmortem was conducted and viscera was preserved. After receipt of the viscera, the Medical Officer gave the final opinion on 22/11/2016.

03] Shri Thengre, learned Counsel for the petitioner submits that respondent nos.12, 13 and 14 with the aid of respondent nos.15, 16 and 17 have committed murder of the deceased. He submits that since the investigation was not done in a fair manner, it is necessary that the investigation be transferred to the C.B.I.

04] Shri Ganguly, learned Counsel for respondent nos.4, 9, 10 and 11 submits that upon carrying out the investigation, it has been found that the deceased had died due to natural death. He submits that merely because the petitioner wants the investigation to be transferred to the C.B.I., it cannot be a ground for directing the investigation to be transferred to the C.B.I. He, therefore, relies upon the judgment of the Apex

Court in the case of **State of West Bengal & others vs. Committee for Protection of Democratic Rights, West Bengal & others,** reported in **(2010) 3 SCC 571.**

05] We have perused the entire material placed on record. It would reveal that the investigating agency has also recorded the statement of Dr. Atul Jain, to whom the deceased was taken immediately. In his statement, he has clearly stated that when deceased-Vijay was brought to his clinic, the deceased was in dead condition. He has stated that after examination, he found the cause of death to be heart attack. Not only that but the postmortem report would reveal that while conducting the postmortem, viscera was preserved and sent for analysis. The doctor, who conducted the postmortem, had reserved his opinion with regard to cause of death. It would further reveal that the C.A. Report from the Regional Forensic Science Laboratory, Bhopal (M.P.) shows no substance of poison was found in the viscera. After receipt of the C.A. Report, the Professor &

Head, Department of Forensic Medicine & Toxicology, Government Medical College, Nagpur and the Lecturer, Department of Forensic Medicine, Government Medical College, Nagpur have given final opinion about cause of death as "*Postmortem and histopathological findings are consistent with death is due to Myocardial Infarction*". It could thus be seen that the opinion of the Doctor, to whom the deceased was taken immediately, as well as the postmortem report consistently find that the death was due to "*Myocardial Infarction*".

06] We have all the sympathy with the petitioner, who has lost his son at a young age, however, merely that cannot be a ground for directing the investigating to be transferred to the C.B.I. Unless this Court finds that the investigation was done in an unfair and partial manner so as to help someone, it would not be appropriate for this Court to exercise the extraordinary power. As held by the Apex Court in the case of **State of West Bengal & others vs. Committee for Protection of Democratic Rights, West Bengal & others,**

cited supra, the extraordinary power vested with this Court under Article 226 of the Constitution of India has to be exercised sparingly, cautiously and in exceptional situations, where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order is necessary for doing complete justice and enforcing the fundamental rights.

07] The perusal of the entire petition would reveal that even the slightest motive is not attributed to respondent nos.12, 13 and 14 for committing the murder of the deceased. On the contrary, the material placed on record would reveal that the deceased and his wife i.e. respondent no.12 happily went out of the house in the night of 24/03/2016 along with respondent nos.13 and 14 and their children. It is further to be noted that they had left with the consent of the present petitioner. It is not also as if that there were any bickering between the deceased and respondent nos.12 or their relationships were strained. In the absence of

any motive and when the scientific evidence clearly shows that death has caused due to "*Myocardial Infarction*", merely because the petitioner desires the investigation to be transferred to the C.B.I., in our view would not be a ground to issue such a direction.

08] In that view of the matter, we see no merits in the petition. The petition is, therefore, rejected.

JUDGE

JUDGE

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