

Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA***

***WRIT PETITION NO.1105 OF 2017***

***WITH***

***CRIMINAL WRIT PETITION NO.86 OF 2016***

***WITH***

***CRIMINAL MISC. APPLICATION NO.65 OF 2018***

***WITH***

***CRIMINAL WRIT PETITION NO.98 OF 2016.***

Estelita Maria Dias, through her

Power of Attorney and Anr.

.....

Petitioners.

V/s.

The State of Goa, through Chief

Secretary and others.

.....

Respondents.

Mr. Nigel da Costa and Ms. Maria Correia, Advocates for the  
Petitioners.

Mr. Aires Rodrigues, Respondent No. 3 in person.

Mr. Ryan Menezes, Advocate for Respondent No.10 in WPCR  
No.86/2016, for Respondents No.9 & 11 in Cri. Misc. Application  
No.65/2018 and for Petitioners in WPCR No.98/2016.

Mr. S. R. Rivankar, Public Prosecutor for the Applicant-State in Cri.  
Misc. Application No.65/2018.

***Coram : N.M. Jamdar &  
Prithviraj K. Chavan, JJ.***

***Date : 16 March 2018.***

**P.C.:**

The Criminal Misc. Application No.65/2018 is filed by the  
State. By this Application, the State prays for further four weeks'

time to complete the investigation and submit the final investigation report. This application is placed on the board along with Writ Petition No.1105/2017, and other Criminal Writ Petitions.

2. In Writ Petition No.1105/2017, the family of the deceased has challenged the order passed by the Goa Human Rights Commission, directing that the funeral rites of the deceased be held. The family of the deceased have challenged these directions on the ground that if funeral rites are undertaken it will impede and hamper the criminal investigation as the body will not be available. By order dated 12 December 2017, we had directed that Writ Petition No.1105/2017 be heard along with the Criminal Writ Petitions.

3. The learned Counsel for the Petitioners i.e. the family of the deceased, and the Respondent No.3 in person in the Writ Petition, agree that the situation of the body remaining in the morgue cannot continue perpetuity and an immediate end to this situation is beneficial of all. In the context of this consensus, we asked the learned Counsel for the Petitioners and the learned Public Prosecutor for the State, as to how the impasse could be ended. After much deliberations at the bar, both the counsel, upon instructions, suggested the following course of action. They jointly suggested that a two Members panel, consisting of the Dean, Goa Medical College and a Senior Expert in the subject suggested by the

Petitioners, should be constituted. They agreed that this Panel will decide whether the body needs to be kept in the morgue till the entire investigation is complete or it is not necessary any more.

4. There was further discussion as to whether to reach the above conclusion further autopsy is necessary. The learned counsel for the parties agreed to leave that decision to the Panel. The learned counsel agreed and suggested that the Panel will first find out whether any further autopsy is needed. It was agreed by the learned Public prosecutor that if the panel opines that further autopsy is needed, then State will accept the recommendations of the Penal. The learned Counsel for the Petitioners also agrees that, if the Panel opines that further autopsy is not required, Petitioners will accept the report of the Penal. If the Panel opines that the further autopsy is needed, then the modalities of the further autopsy will be decided by them and they will ensure that the method is transparent and requisite care is taken. After this first decision is taken then the Panel will decide next and main question whether the body needs to be kept in the morgue till the investigation is needed.

5. Therefore, to enable the Panel to report to us on the outcome of the first step, we defer the hearing of this petition till 5 April 2018. On that day, the Panel, through the Public Prosecutor will report to the Court as to whether further autopsy is needed by

them to take the decision as regards the need for preservation of the body till the criminal investigation is over, or otherwise.

6. We make it clear that we have undertaken this exercise only because of the peculiar facts and circumstances of this case and because of the consensus of the learned Counsel for the parties, and it shall not be a reflection on the merits of the investigation, in any manner.

7. The learned Counsel for the Petitioners states that the name of the Senior Expert chosen by the Petitioners will be informed to the learned Public Prosecutor by tomorrow, i.e. 17 March 2018. Respondent No.3 in person states that there may be an error in the number of the proceedings in the prayer clause of the Petition and the learned Counsel for the Petitioners states that he will examine the position and carry out the amendment, if necessary. If necessary, leave to amend for that purpose is granted.

8. Ad interim relief to continue.

9. In view of the above position, the Criminal Misc. Application No.65/2018, for extension of time, is allowed and disposed of.

***Prithviraj K. Chavan, J.***

***N.M. Jamdar, J.***