

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1234 OF 2017**

Mukesh S/o. Ramchandra Rajput

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. A. M. Saraogi for the Petitioner

Mrs. P. P. Shinde, A.P.P for the Respondent-State

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
MONDAY, 6th AUGUST 2018***

P.C. :

1 The above Writ Petition has been filed directing transfer of investigation in respect of FIR No. 438 of 2016 registered for offence punishable under Section 302 of the Indian Penal Code. The transfer is sought to the Crime Branch or the CBI or to be investigated by a Senior Officer of the rank of Deputy Commissioner of Police.

2 The FIR has been registered in respect of the death of the brother of the Petitioner. We have gone through the post-mortem report of

the deceased. In the post-mortem report, against the column as regards the cause of death, the following is mentioned :

“Asphyxia due to Manual with Ligature Strangulation (unnatural).”

3 The above Writ Petition has been appearing from time to time before this Court. By order dated 17th October 2016, a Division Bench of this Court (Coram : Naresh H. Patil and Prakash D. Naik, JJ.) directed the investigation to be carried out under the supervision of the Assistant Commissioner of Police (ACP), Santacruz Police Station, Mumbai. Further, direction was issued that the investigating agency shall take necessary steps for completing the investigation as expeditiously as possible. With the said direction, the said Writ Petition came to be disposed of. Thereafter, another Division Bench of this Court (Coram : R. M. Savant and Sarang V. Kotwal, JJ.) by order dated 4th May 2018 directed the ACP, Santacruz Division, Mr. Dattatray P. Bhargude to file an affidavit as regards the supervision he has carried out pursuant to the said order dated 17th October 2016. In terms of the said directions, an affidavit dated 12th June 2018 has been filed by Mr. Dattatray P. Bhargude, ACP, Santacruz Division,

Mumbai. In paragraph 6 of the said affidavit, it is stated that pursuant to the directions as contained in the order dated 17th October 2016, the investigation came to be carried out under the supervision of the ACP, Santacruz Division. The said supervision was initially assigned to Mr. Sanjay Kadam, ACP, having additional charge of Santacruz Division who supervised the said investigation and also gave written instructions to the concerned Investigating Officer. It is further stated that he supervised the investigation till 31st October 2016 and from 1st November 2016 the investigation was assigned to Mr. Bhargude and that he carried out the investigation from the said date. In Paragraph 7, it is stated that he has supervised the said investigation, given instructions to the Investigating Officer from time to time as also has given written permission to file the charge-sheet before the competent Court and that the charge-sheet was filed vide CC No. 2203/PW/16 dated 24th November 2016 and that the case has been committed to the Sessions Court and now bears case No. 841 of 2016 and is pending trial. Prior to the said paragraphs, the registration of the FIR being C.R. No. 438 of 2016 under Sections 302, 201 and 34 of the Indian Penal Code has been referred to. It is further mentioned that during the course of the investigation, it was revealed that the said offence was

committed by one Purity alias Ranita Pascal (Coutino) along with the co-accused. It is further stated that during the course of the investigation, police have arrested the co-accused one Sukhpal Singh alias Pal Jaswant Singh on 6th September 2016.

4 The learned counsel appearing on behalf of the Petitioner Mr. Saraogi would question the affidavit on the ground that the steps taken by the ACP who was directed to investigate, have not been mentioned in the said affidavit. It is not possible for us to accept the said contention when the present ACP Mr. Bhargude has, in terms, stated that the earlier investigation was carried out under the supervision of ACP Mr. Kadam who was holding the additional charge of Santacruz Division, and thereafter from 1st November 2016, he has carried out the supervision of the investigation by issuing instructions to the Investigating Officer from time to time and that the charge-sheet was filed after obtaining his permission. The supervision that was carried out by the ACP would obviously have no reflection in the papers, as the ACP was only required to supervise the investigation carried out by the Investigating Officer.

5 It was also the submission of the learned counsel for the Petitioner, relying upon certain press reports in the nature of clips that the strangulation appears to have been done by something other than the *dupatta*. It is not possible to go into the said aspect at this stage, especially in our writ jurisdiction, as the same is a matter for trial.

6 The learned A.P.P has submitted a file containing the viscera report which has been obtained post filing of the charge-sheet. The learned A.P.P states that the said material would also be placed before the trial Court by filing an appropriate application.

7 In our view, in the light of the aforesaid facts, it is not necessary to keep the above Petition pending. It is required to be borne in mind that the trial Court is always within its rights to exercise powers under the appropriate provisions of the Code of Criminal Procedure, if it so deems fit, in the light of the material which comes before it during the course of the trial. We express no opinion in that regard. We are also informed that the articles found in the car i.e. hair, thread of cloth, the plastic spoon, etc. which has been recorded in the panchanama dated 31st August 2016, have

also been sent to the Forensic Laboratory and that the report in respect of the same is awaited. The learned A.P.P states that the report would be expedited and that after the report is obtained, the same would also be submitted to the trial Court.

8 The Writ Petition to accordingly stand disposed of.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.