

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

CRIMINAL WRIT PETITION NO.2731 OF 2017

Mahendra alias Mahesh Bhikubhai Arya Petitioner
versus
The State of Maharashtra & Anr. ... Respondents
.....

- Ms.Rekha Shinde, a/w. Mr.Yogendra Rajgor, i/b. Legal Chartered, Advocate for the Petitioner.
- Mrs.P.P. Shinde, APP for the State/Respondent.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 26th APRIL, 2018.**

P.C. :

1. The above Writ Petition has been filed for transfer of investigation to another agency to investigate into the FIR being No.165/15. It is required to be noted that the said FIR has been investigated into and the charge-sheet has already been filed in the Trial Court. All the accused are charged u/s 306 of the IPC. The transfer of investigation is sought on the ground that the facts disclose the commission of offence u/s 302 of IPC. In so far as the relief claimed in the present Petition is concerned, the

said relief is identical to the relief sought in the earlier Petition being Writ Petition No.3441/15 filed by the Petitioner abovenamed, who is the father of the deceased Hitesh Arya.

2. The said Writ Petition was disposed of by a Division Bench of this Court by giving Petitioner the liberty to file a comprehensive representation addressed to the Commissioner of Police, Thane, containing the basis on which the Petitioner desires further investigation. On such representation being received from the Petitioner, the Commissioner of Police, Thane, was directed to call for a detailed report from the Sr.P.I. of the concerned police station, to verify the record and take appropriate decision regarding the request to carry out further investigation by invoking power u/s 173 (8) of the Cr.P.C. It was further directed that in case the Commissioner of Police is of the view that the further investigation is necessary, then investigation shall be carried out by the Sr.PI. of the concerned police station, under the supervision of the Commissioner of Police, Thane.

3. The course of action as propounded by the Division Bench by the order dated 29/08/2016 has been complied with, inasmuch as the Sr.P.I. Kasarvadavli Police Station, Thane, has by his letter dated 22/12/2016 addressed to the Petitioner has communicated to the Petitioner that the application of section 306 of IPC appears to be correct and insofar as section 302 is concerned, no credible material has come to the notice of the investigating agency.
4. During the course of the hearing of the instant Writ Petition, the learned APP Mrs.P.P. Shinde has tendered the report of the Sr.P.I. Kasarvadavli Police Station, Thane, dated 17/02/2017. The said report concisely refers to the material which has been uncovered during the investigation as also refers to the post-mortem carried out of the said Hitesh Arya. The said report concludes that there is no cause for suspicion that any poisonous substance has been found in the stomach of the deceased. The sum and substance of the report is that the application of section 302 of the IPC is not warranted.

5. The learned Counsel appearing on behalf of the Petitioner would seek to draw our attention to the material, which is part of the charge-sheet, including the spot panchanama, so as to buttress her contention that it is a case of murder so as to attract the provisions of section 302 of IPC.
6. We to satisfy ourselves have gone through the material as also the reply which was sent to the Petitioner, as also present report dated 17/02/2017, which has been handed over to us by the learned APP. On such perusal we do not find that the conclusion reached by the Investigating Officer who was asked to investigate by the Commissioner of Police i.e. Sr.PI. Inspector of Police, Thane, can be said to be faulty. In that view of the matter, we cannot accede to the request of the Petitioner for transfer of the investigation and to carry out further investigation.
7. The Writ Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)