

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

Criminal Writ Petition No.1136 of 2017

[Mrs. Navita Avadesh Yadav v. The State of Maharashtra, through its Secretary, Department of Home, Mantralaya, Mumbai, and others]

And

Criminal Writ Petition No.263 of 2018

[Sau. Geeta w/o Mangal @ Satyaprakash Yadav v. The State of Maharashtra, through its Secretary, Department of Home, Mantralaya, Mumbai, and others]

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

In both the criminal writ petitions :

Shri R.R. Vyas, Advocate for Petitioners.
Ms T.H. Udeshi, Additional Public Prosecutor for Respondents.
Shri M.P. Khajanchi & Shri R.M. Daga, Advocates for Intervenors.

Coram : R.K. Deshpande and Vinay Joshi, JJ.

Dated : 24th October, 2018

1. Both these petitions are claiming the relief of transfer of investigation of Crime No.226 of 2017 registered against a group led by one Omprakash @ Munna Yadav in Dhantoli Police Station, Nagpur for the offences punishable under Sections 452, 307, 323, 324, 325, 141, 143, 147, 148, and 149 of the Indian Penal Code read with Sections 4 and 25 of the Arms Act, and Section 135 of the Maharashtra Police Act on 22-10-2017 to the Central Bureau of Investigation or any other Investigating

Agency.

2. The incident is of 21-10-2017 occurred at about 9.30 p.m. in the jurisdiction of Dhantoli Police Station. The FIRs bearing Nos.226 of 2017 and 227 of 2017 were registered at the instance of the rival parties, who are said to be the cousins. The offences punishable under Sections 452, 307, 323, 324, 325, 141, 143, 147, 148, 149 of the Indian Penal Code, Sections 4 and 25 of the Arms Act, and Section 135 of the Maharashtra Police Act are also registered against the rival group, probably led by Avadesh @ Papa Yadav.

3. Criminal Writ Petition No.1136 of 2017 is filed by the wife of one Avadesh Yadav, who is the accused in Crime No.227 of 2017 and is reported to be absconding. Criminal Writ Petition No.263 of 2018 is filed by the wife of one Mangal Yadav, who is also the accused in Crime No.227 of 2017 and is reported to be absconding. It is alleged that one Omprakash @ Munna Yadav, who is one of the co-accused in Crime No.226 of 2017, was also absconding, but subsequently under the interim protection of bail granted passed by the Apex Court against the order rejecting bail application, he appeared before the Investigating Officer, who granted him bail. Upon the final disposal of the appeal before the Apex Court, he was directed to remain present before the Magistrate at the time of consideration of his application for

regular bail, as the chargesheet was filed on 1-3-2018. Initially, the investigation was being conducted by the Police Station Officer, Dhantoli Police Station, but subsequently it was transferred by the State to the Crime Branch on 15-2-2018.

4. It is urged by Shri Vyas, the learned counsel appearing for the petitioners, that the investigation need to be transferred to an independent agency of Central Bureau of Investigation or Criminal Investigation Department for several reasons - (i) that the accused Omprakash @ Munna Yadav is a politically influential person and had been a Corporator of the ruling party for four terms. He is the Chairman of the State Construction Workers Welfare Board and is being unduly protected by the Investigating Agency, (ii) that no attempts are made to arrest the accused Munna Yadav, (iii) that in the chargesheet filed on 1-3-2018 in Crime No.226 of 2017, he is shown to be absconding, and (iv) that though initially the offence under Section 307 of IPC was registered, the same is dropped, holding that there is no evidence on record to establish such offence. It is urged that in the affidavit filed by the respondents, it is stated that the spot of incident was shown by Avadesh Yadav and he was present at the time of drawing of spot panchanama on the next day, i.e. on 22-10-2017, between 7 a.m. and 9 a.m., which is totally false, for the reason that the discharge card of Avadesh

Yadav from the hospital shows that he was admitted in the hospital at 4.30 a.m. on 22-10-2017 and was discharged at 6.30 p.m. on 23-10-2017. The case diary, as required under Section 172(1B) of the Code of Criminal Procedure is not maintained. The CCTV camera installed at the place of incident, has also not been seized.

5. Merely because the offence punishable under Section 307 of IPC is dropped from the chargesheet, that would not make the investigation by the Crime Branch as faulty, for the reason that – to establish the offence under Section 307 of IPC, the injury need not be proved, but only the intention and knowledge is required to be proved. The maximum punishment in respect of the offences under Sections 307 and 326 of IPC is the same. The offence punishable under Section 326 of IPC is already included in the chargesheet. The question as to whether the accused is absconding, has lost its significance, particularly when on the basis of the interim order passed by the Apex Court in a case arising out of rejection of bail application, the accused was present before the Investigating Officer and was shown to be arrested and released on bail. The weapon, said to have been used in the crime, has already been recovered from the co-accused. It is open for the Trial Court to direct addition or alteration of charge, invoking its jurisdiction under Section 216 of Cr.P.C. and even to direct further investigation under

Section 173(8) of Cr.P.C.

6. We have gone through the affidavits filed by the Investigating Officer and the Crime Branch, as also the spot panchanama. Except the statement of one Mangal Yadav, the absconding accused in FIR No.227 of 2017, prima facie, we do not find any material to suggest that the CCTV camera existed on the spot. We find that two accused, viz. Avadesh and Mangal, in FIR No.227 of 2017 are absconding. In this FIR, the offence punishable under Section 307 of IPC was registered, but subsequently, it is dropped. We are unable to find any lacuna in the investigation conducted and to doubt the credibility of the investigation by the Crime Branch. The affidavit filed is in conformity with the contents of the spot panchanama and cannot, therefore, be said to be false.

7. In spite of repeated queries, the learned counsel for the petitioners could not point out any deficiency in conduct of investigation, which may become fatal to prove the case of the prosecution, except that the accused was not arrested and that he is absconding. The fact remains that the accused Omprakash @ Munna Yadav was arrested and released on bail. It is for the Investigating Agency to decide whether the custody of the accused is required for investigation or interrogation. At any rate, upon transfer of investigation to Crime Branch, we think

that any doubt about manner of investigation by Police Station Officer has lost its significance and nothing is pointed out to us raising any doubt about the investigation by the Crime Branch. We do not find any exceptional case is made out to transfer the case to any agency.

8. In view of above, we do not find that any case is made out for transfer of investigation – that too after filing of the chargesheet. Both these criminal writ petitions stand dismissed.

(Vinay Joshi, J.)

(R.K. Deshpande, J.)