

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1891 OF 2019

Narayan s/o. Sahebrao Karale,
Age 52 years, Occu. Agril.,
R/o. Pisarakhand, Tq. Shrigonda,
Dist. Ahmednagar.

....Petitioner.

Versus

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
3. The Police Inspector,
Shrigonda Police Station,
Tq. Shrigonda, Dist. Ahmednagar.

....Respondents.

Mr. R.A. Tambe, Advocate for petitioner.

Mr. S.G. Sangle, APP for respondents.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

DATED : 25/02/2020.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2) Various directions are claimed in the present matter like giving direction to the present respondents to add section 302 of I.P.C., transfer the investigation to other investigating agency as the

petitioner has suspicion about the fairness of the investigating agency and other reliefs. The deceased was son of the present petitioner. He was unmarried. Crime at present is registered at C.R. No. 564/2019 in Shrigonda Police Station for offence punishable under section 306, 34 of I.P.C.

3) Some incident took place in village Pisarkhand, Tahsil Shrigonda on 6.6.2019 at about 6.00 p.m. near the house of deceased. The main suspect is the member of the Village Panchayat and he is also involved in the work of supplying water to the villagers by using tankers. On that evening when the deceased requested the main suspect to give one tanker to them, the quarrel took place and during quarrel the deceased was assaulted by main suspect. He approached police on the same day and gave report. On the basis of report, N.C. was registered under section 323, 504, 506 etc. of I.P.C. against the main suspect namely Udhav Yerka.

4) After giving the report to Shrigonda Police Station when the deceased was expected to return to home, he did not return to home on 7.6.2019. Somebody informed to the father of the deceased that dead body of the deceased was hanging at a tree situated in Deulgaon Galande Forest. After seeing the dead body, Narayan, father of the deceased gave report to police and informed that on the previous day, the deceased was assaulted and due to the dispute

which had started on the previous day, he had suspicion that the wrong was done to the deceased by the same persons. First A.D. was registered and then the offence of abetment of suicide came to be registered.

5) This Court has carefully gone through the spot panchanama and the P.M. report. The spot panchanama and the photographs which were taken by the police and which were shown to this Court today show that the dead body was hanging at a branch of tree, but up to the knee portion, the legs of the deceased were touching to the ground. A rope which was used was long one. The P.M. report shows that there were injuries like abrasions over right forearm, right hand middle finger, over right foot and left foot, second toe, dorsally and there were some ant bite marks over chest and right lumber. There was no fracture of thyroid cartilage, cricoid cartilage and hyoid bone. The photographs show that there was clean ligature mark over the neck though the ligature mark appearing in the photographs appears to be oblique and directing upwards.

6) The papers of investigation which include the remand report show that right from the beginning, the investigating agency felt that it is suicide and there is the allegation of abetment of suicide. Aforesaid circumstances like the portion of legs below knee

was touching to the ground and aforesaid findings recorded in the P.M. report were not given serious thought. Today one more report of forensic office came to be produced to support the investigating agency but it shows that the possibility of hanging by the deceased to commit suicide cannot be ruled out is the opinion. That does not mean that there is no possibility of homicidal death.

7) The aforesaid circumstances show that the deceased wanted to return home on that evening after giving report against the main suspect, but he did not return to home. The record does not show that any investigation was made to find out as to how the rope was collected when the deceased was to return from police station directly. From the photographs, it is difficult to believe that the rope was new. In any case, it was the duty of the investigating agency to find out as from where the rope, ligature material was collected if it was collected by the deceased. The absence of that kind of investigation creates serious doubt about the manner in which the investigation was made. There are more circumstances which are already quoted creating doubt about the fairness of the investigation. The father of the deceased has serious doubts about the fairness of the investigation and there are aforesaid circumstances. Ordinarily when there is the report of aforesaid nature that there are both possibilities, it is desirable for the police to start investigation for more serious offence and then form own

opinion. The police papers do not show that police ever suspected that there is possibility of homicide. Such possibility can never be ruled out by the police when there are aforesaid circumstances.

8) Due to aforesaid circumstances, this Court has formed the opinion that there is substance in the grievance raised by the father of the deceased that investigation was not made fairly. Due to all these circumstances, this Court holds that investigation needs to be given to other investigating agency like Crime Investigating Department (C.I.D.), Pune. So, the following order.

ORDER

(I) Petition is allowed.

(II) Direction is hereby given to present investigating agency to hand over the investigation to C.I.D., Pune. Direction is hereby given to C.I.D., Pune to see that the officer of the rank of Dy.S.P. is appointed to make investigation of this case.

Rule is made absolute in aforesaid terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

ssc/