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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

901 CRIMINAL WRIT PETITION NO.349 OF 2021

VARSHA W/O. DINESH RATHOD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr Mahesh S. Taur, Advocate for petitioner;
Mr D. R. Kale, Public Prosecutor with Mr S. G. Sangle, A.P.P. for
respondents

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 17th March, 2021

PER COURT:

1. By this petition, the petitioner, who is the informant, has put forth prayer clauses 'B' and 'C', which read as under :-

"B) That by issuing appropriate writ, order or direction the investigation in crime no. 0277 registered with Pachod police station may kindly be transferred to any other superior officer under supervision of respondent no.1.

C) That, the respondent authorities may kindly be directed to arrest accused persons in crime no.0277 registered with Pachod Police station and further be directed to file charge sheet in accordance with law."

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2. We have considered the submissions of the learned Advocate for the petitioner and the learned Public Prosecutor on behalf of the respondents – State authorities. With their assistance, we have gone through the petition paper book and the large compilation of documents (88 pages), which are said to be the investigation papers in relation to the crime registered on the information supplied by the informant.

3. The petitioner claims to have got married to accused No.1 – Dinesh Babulal Rathod, about three years prior to the registering of the crime. Accused No.2 – Dilip Babulal Rathod, is the brother-in-law of the petitioner and accused No.3 – Babulal Poma Rathod, is the father-in-law of the petitioner. A girl child was born within a year from the marriage and the date on which the crime was registered, the child was about eight months only.

4. It is stated in the first information report that on account of a marital discord, the relations got strained. She had gone to her maternal home for her first delivery. On 23/04/2020, she, along with her father and close relatives proceeded to her marital home. After reaching the Parundi Tanda, where her marital home was situated, the petitioner and her brother waited inside the car and her father and the relatives approached the husband of the

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petitioner and his relatives. However, the accused are said to have refused entry to the said relatives and declared that they do not want the petitioner to enter their home. Even after much deliberation, the in-laws of the petitioner were not pacified. Finally, the petitioner and her child stayed back at the house of the in-laws and she occupied a bedroom at the end of the house.

5. It is her version in the first information report that around 8.30 p.m. on 25/08/2020, husband – Dinesh, brother-in-law – Dilip and father-in-law – Babulal, entered her room and gagged her by inserting a stoll handkerchief (ओढणी) in her mouth, covered her face and dragged her outside the room and brought her to the road going towards Adul. She contends that she was dragged for about 2 kms. and was thrown on the side of the road. The cloth wrapped around her face was removed and after taking out the cloth piece from her mouth, husband Dinesh is alleged to have forcibly administered an insecticide in her mouth and the other two accused held her hands and legs. The husband, thereafter beat her and tried to strangulate her. After she fell unconscious, the three accused fled. The petitioner claims to have recovered from her unconsciousness when her eight months daughter started crying next to her. There was complete darkness around and she picked up her daughter and called her brother on his mobile phone, which was at about 10.30 p.m.

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6. We are not dealing with the contents of the first information report at this stage. We are dealing with the prayers of the petitioner and in order to assess the gravity of the grievance of the petitioner, that we have narrated the above portion of the first information report. The grievance of the petitioner is, that the Investigating Officer Shri. Gorshnath Rohidas Kharad is not duly investigating into the crime as is legally expected of him. He is deliberately delaying the investigation so as to create loopholes in the case of the prosecution, which would facilitate the acquittal of the accused.

7. The learned Public Prosecutor has strenuously canvassed on the basis of the investigating papers that the apprehension expressed by the petitioner against the Investigating Officer, is misplaced. As the statement of the petitioner was recorded in the hospital on 25/08/2020, a first information report was registered bearing Crime No.0277 of 2020 on 26/08/2020 at about 17.10 hours. The Investigating Officer commenced the recording of statements of various persons, on 28/08/2020. The spot inspection panchnama is dated 26/08/2020. Several persons residing in the Tanda, where the marital home of the petitioner is situated, were also interrogated.

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8. However, on the basis of the investigation papers, the learned Public Prosecutor states that accused No.2 - Dinesh was interrogated for the first time on 11/12/2020, which is after 3 months and 20 days from the date of the first information report. Similar is the case with accused No.3. The main accused No.1 Dinesh was examined on 13/12/2020. There is no explanation from the Investigating Officer as to why has he not reacted with promptitude on 26/08/2020, when a very serious allegation was set out by the petitioner in her report. Prima facie, an attempt to kill the informant was made by accused No.1 and the other two accused and Sections 307, 323 and 504 read with Section 34 of the Indian Penal Code, were invoked.

9. The learned Advocate for the petitioner submits that the laxity on the part of the investigation is going to render a big advantage to the accused. They are bound to canvass the theory of delay in the matter. It appears to the petitioner that the Investigating Officer has deliberately caused the delay to facilitate an advantage to the accused, in the trial.

10. Considering the above, we find that the apprehension voiced by the petitioner cannot be said to be misplaced. We cannot brand her apprehension to be unfounded. Any

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Investigating Officer in place of the present Investigating Officer Shri. Kharad, would have swung into action so as to immediately apprehend the three accused as that would have facilitated the tracing out of the stole towel, the cloth used for gagging, the insecticides which the husband had forcefully tried to administer the petitioner so as to cause her death. He has interrogated the prime accused after three months and 20 days. His conduct speaks for itself and requires no debate. He has failed in his duties.

11. In view of the above, this petition is partly allowed. We deem it appropriate to direct the District Superintendent of Police (Rural), Aurangabad, to appoint a Senior Police Officer, preferably of the rank of an SDPO, to investigate into Crime No.0277 of 2020. We expect the new Investigating Officer to be appointed, to be an officer of repute and no stone be left unturned in the investigation into the Crime with promptitude. Consequently, we would expect the new Investigating Officer to submit the charge-sheet with equal promptitude. We also direct the Superintendent of Police (Rural), Aurangabad to initiate disciplinary action against Shri. G. R. Kharad.

(B. U. DEBADWAR, J.)

sjk

(RAVINDRA V. GHUGE, J.)