

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 363 OF 2008

1. Saheba s/o Gajanan Kale,
Age 22 years, Occu. Labourer,
R/o. Tambe Mala, Burudgaon,
Taluka and District Ahmednagar
2. Girish s/o Japkar Chavan,
Age 37 years, Occu. Private Service,
R/o. 'Sankalp Colony', Burha Nagar,
Ahmednagar, Taluka and District
Ahmednagar.

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Home Department, M.S.,
Mantralaya, Mumbai- 400 032.
2. The District Magistrate / Collector,
Ahmednagar.
3. The Sub Divisional Magistrate,
Ahmednagar Division, Ahmednagar.
4. The Director General of Police (C.I.D.)
M.S., Pune.
5. The Superintendent of Police (C.I.D.)
Nashik Region, Nashik.
6. The Superintendent of Police,
Ahmednagar.
7. The Deputy Superintendent of Police,
State Crimes Investigation Division,
(Crimes) Squad, Ahmednagar.
8. Sunil B. Ramanand,
Addl. Commissioner of Police,
Sp Bench CID, Passport Office,
2nd floor, Near V.J. Times of India Lane,
Fort, Mumbai -1.
9. Central Bureau of Investigation,
New Delhi, through its Director.

10. Shivaji s/o Vitthal Kale,
Age :34 Yrs, Occ. Service,
R/o Row House No. B-9-1,
First Floor, Sambhaji Nagar,
Dhankawadi, Pune.

.. RESPONDENTS

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Mr. Rajendra S. Deshmukh, Senior Advocate for petitioners
Mr. M.M. Nerlikar, APP for respondents No. 1 to 7
Mr. V. D. Hon, Senior Advocate for respondent No. 8
Mr. N.B. Narwade, Advocate for respondent No. 10

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CRIMINAL WRIT PETITION NO. 1658 OF 2015

1. Saheba s/o Gajanan Kale,
Age 29 years, Occu. Labourer,
R/o. Tambe Mala, Burudgaon,
Taluka and District Ahmednagar
2. Girish s/o Japkar Chavan,
Age 45 years, Occu. Private Service,
R/o. 'Sankalp Colony', Burha Nagar,
Ahmednagar, Taluka and District
Ahmednagar.

.. PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Department of Home, M.S.,
Mantralaya, Mumbai.
2. The Deputy Secretary,
Department of Home, M.S.,
Mantralaya, Mumbai.
3. The Desk Officer,
Department of Home, M.S.,
Mantralaya, Mumbai.
4. The Director General of Police,
M.S., Mumbai.
5. The Superintendent of Police,
(C.I.D.), M.S. Mumbai.
6. The Special Inspector General of Police
(Law and Order), M.S., Mumbai.
7. The Superintendent of Police
(C.I.D.), Nashik Region, Nashik.

8. The Superintendent of Police,
Ahmednagar.
9. The Deputy Superintendent of Police,
State C.I.D. (Crime Squad),
Ahmednagar.
10. Tukaram s/o. Kondiba Vahile,
Age 56 years, Occu. Service as
Police Inspector with Lonavala
Police Station, R/o. RA-5/9,
Shantivan Society, Chinchwad,
Pune, Taluka and District Pune.
11. Devidas s/o. Baburao Sonawane,
Age 59 years, Occu. Retired,
R/o. Chhatrapati Colony, Bhistbag Naka,
Pipe Line Road, Ahmednagar,
Taluka and District Ahmednagar.
12. Shivaji s/o. Baburao Sudrik,
Age 65 years, Occu. Retired A.S.I.,
R/o. Varad Colony, Bhutkar Wadi,
Ahmednagar, Taluka and District
Ahmednagar.
13. Deepak s/o. Nanasaheb Haral (Died)
14. Arun s/o. Ramchandra Deokar,
Age 45 years, Occu. Service as P.S.I.,
R/o. At Post Found Shiras,
Taluka Malshiras, District Solapur.
15. Bmalasaheb s/o. Shankarrao Ahiwale,
Age 56 years, Occu. Service as Police
Constable, R/o. Kaveri Nagar,
Police Line, Building No. 37, Room No.7,
Wakad-Pune, Taluka and District Pune.
16. Sunil s/o. Sitaram Chavan,
Age 39 years, Occu. Service as
Police Constable, R/o. Plot No. 118,
'Seetakunj', Taluka and
District Ahmednagar.

.. RESPONDENTS

...

Mr. Rajendra S. Deshmukh, Senior Advocate i/b. Mr. Govind A. Kulkarni,
Advocate for petitioners,

Mr. M.M. Nerlikar, APP for respondents No. 1 to 9

Mr. N. V. Gaware, Advocate for respondent No. 10

Mr. R. N. Dhorde, Senior Advocate i/b. Mr. V. R. Dhorde, Advocate for
respondents No. 11 and 14

Mr. V. P. Latange, Advocate for respondent No. 15

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CRIMINAL WRIT PETITION NO. 139 OF 2009

Shivaji Baburao Sudrik,
Age 59 years, Occu. Retired,
R/o. Bhutkarwadi, Varad Colony,
Ahmednagar, Taluka and District
Ahmednagar.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Home Department,
Mantralaya, Mumbai.
2. Saheba s/o Gajanan Kale,
Age 22 years, Occu. Labourer,
R/o. Tambe Mala, Burudgaon,
Taluka and District Ahmednagar
3. Girish s/o Jagkar Chavan,
Age 37 years, Occu. Private Service,
R/o. 'Sankalp Colony', Burha Nagar,
Ahmednagar, Taluka and District
Ahmednagar.

.. RESPONDENTS

...

Mr. V. D. Hon, Senior Advocate for petitioner

Mr. M. M. Nerlikar, APP for respondent No. 1

Mr. Rajendra S. Deshmukh, Senior Advocate for respondents No. 2 and 3

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CRIMINAL WRIT PETITION NO. 900 OF 2011

Dr. Sidhavaram Deepak Subramanyam,
Age 57 years, Occu. Medical Practitioner,
R/o. Deepak Hospital, Savedi,
Ahmednagar, District Ahmednagar.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
2. Girish s/o Jankar Chavan,
Age 41 years, Occu. Agriculture,
R/o. Sankalp Colony, Buranagar,
Taluka and District Ahmednagar.
3. Sayba s/o Gajanan Kale,
Age 29 years, Occu. Agriculture,
R/o. Tambe Mala, Burudgaon,
Taluka and District Ahmednagar

.. RESPONDENTS

...
Mr. V. D. Hon, Senior Advocate for petitioner
Mr. M. M. Nerlikar, APP for respondent No. 1
Mr. Rajendra S. Deshmukh, Senior Advocate for respondents No. 2 and 3
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CORAM : T. V. NALAWADE AND
M.G. SEWLIKAR, JJ.

DATE : 13th JANUARY, 2021

JUDGMENT : (Per : T.V. Nalawade, J.)

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

2. One Suman Kale, a lady aged about 50 years of *Pardhi*, tribal community, died while in custody of Police. All the proceedings are in respect of death of Suman Kale. Petitioner No. 1 and 2 from Criminal Writ Petition No. 1658 of 2015 are the son and the real brother of deceased Suman respectively and Criminal Writ Petition No. 363 of 2008 is also filed by them. This Court is mentioning as to who has filed other proceedings and for what purposes.

3. In prayer clauses (C) and (D) of Criminal Writ Petition No. 1658 of 2015, the petitioners have claimed reliefs like quashing and setting aside order of the State Government, by which, sanction is refused to prosecute the Police Officers for the offences punishable under Sections 306, 120-B, etc. of Indian Penal Code ("IPC"). The interim relief was claimed to see that Sessions Case is kept pending till Criminal Writ Petition No. 1658 of 2015 is decided. It appears that interim relief was granted and due to that Sessions Case No. 184 of 2013 is still pending in the Court of Sessions Judge, Ahmednagar.

4. In Criminal Writ Petition No. 363 of 2008, reliefs are claimed like, giving directions to see that crime is registered for the offence committed by Police and others under Section 302 of IPC. The prayer is also made to transfer the investigation to Central Bureau of Investigation ("CBI"), as Central Investigation Department ("CID") had filed charge-sheet for the offence punishable under Section 306 of IPC. A compensation of Rs.3,00,000/- (Rs. Three Lakh only) is claimed in respect of custodial death of Suman.

5. The charge-sheet is filed by CID (Deputy Superintendent of State CID) for the offences punishable under Sections 306, 330, 331, 341, 343, 201, 109, 166, 193 read with Section 34 and 120-B of IPC. The charge-sheet is filed against seven Police Officers and one private doctor. In the charge-sheet allegations are made that on 12-05-2007, Local Crime Branch, Ahmednagar and Police of Kotwali Police Station, Ahmednagar, illegally picked-up deceased Suman from her residential place situated at Burudgaon, tahsil Ahmednagar, at about 12.30 p.m. It is also alleged that mobile handset of Suman having SIM No. 9860351639 was taken by Police with them, and after that, she was illegally detained at the places like Kotwali Police Station, LCB Office situated in the building of office of District Superintendent of Police Ahmednagar, Government Rest House, Jamkhed, tahsil Jamkhed and Deepak Hospital, Ahmednagar till 16-05-2007.

6. There is allegation in the charge-sheet that no record of arrest of Suman was prepared by the Police and on aforesaid places Suman was tortured both physically and mentally to extract some information from her in respect of Crime No. 261 of 2006, which was

registered in Shrirampur Police Station, District Ahmednagar for the offence punishable under Section 395 of IPC. Suman was not made accused in the said crime. On the basis of statement of One Smt. Astari, Police wanted to extract information from Suman in respect of stolen property and they felt that gold weighing One Kilogram, which was from that case, was in possession of Suman.

7. There are allegations against Police Officers that in between 12-05-2007 and 14-05-2007 Suman was assaulted, serious injuries were caused to her both external and internal, and ultimately, she become unconscious on 14-05-2007 and then She was shifted to private Hospital of Dr. Sidhavaram Deepak Subramanyam (accused No.7) on 14-05-2007. There are allegations that to screen the offence committed by Police and Doctor from Deepak Hospital, false record was created in respect of injuries and treatment. It is fact, which is on record that Suman died in Deepak Hospital on 16-05-2007, which is of accused No. 7. In the charge-sheet, allegations are made that due to torture of Police, other accused from the case, Suman consumed poison and she died suicidal death. In view of the the opinion formed of suicide by Police, the charge-sheet is filed for aforesaid offences.

8. On the basis of investigation made by CID, opinion is formed by the Investigating Agency and it is as under:-

"The investigation revealed that Suman was illegally picked-up from her residential place on 12-05-2007 and from that time she was illegally detained by Police Officers, who are accused, till 16-05-2007." In view of this nature of opinion formed by Investigating Agency and as one accused has challenged something like report of Sub-Divisional Magistrate

prepared during enquiry under Section 176 of Cr.P.C., there is no need to make detail discussion about facts which resulted in aforesaid opinion.

9. Criminal Writ Petition No. 900 of 2011 is filed by Dr. Sidhavaram Surbramanyam of Deepak Hospital for relief of quashing First Information Report (FIR) and charge-sheet. Criminal Writ Petition No. 139 of 2009 is filed by accused No. 3 - Shivaji Baburao Sudrik, Police Officer for relief of quashing enquiry conducted by Sub Divisional Magistrate, Ahmednagar, under Section 176 of Cr.P.C. This Court is considering the relevant material available against accused - Shivaji Sudrik. When after hearing learned counsel appointed by petitioner-Doctor of Deepak Hospital and other side, this Court expressed that the Court is not inclined to grant relief as prayed, learned counsel for the petitioner – Doctor, on instructions, submitted that he wanted to withdraw the proceeding. So, Criminal Writ Petition No. 900 of 2011 can be disposed of as withdrawn and there is no need to discuss the record created by Doctor of Deepak Hospital in detail. Only for some relevant points, the record is being discussed.

10. The material collected by Police, which is filed along with charge-sheet and contentions made by son and brother of the deceased show that there are some inconsistencies at least in the record created by Police about versions of the petitioners. Specific allegations are made by the close relatives of the deceased that Police made an attempt to obtain their signatures on blank papers by showing that they will not allow the relatives to see the deceased in Deepak Hospital if signatures are not made. It appears that in one police statement of the husband of deceased, there is signature of husband of deceased, but for the present

purpose and in view of provisions of Sections 161 and 162 of Cr.P.C., not much weight can be given to these statements. It is always open to the defence to confront such statements to the witnesses during cross-examination. It is specific contention of the close relatives of deceased that they were helpless and they ran from pillar to post, but, nobody was ready to listen to their grievance, as Police Officers were involved in the incident. It is their contention that they had approached to concerned Police Station, from where deceased was picked-up, but, said Police Station flatly refused to entertain the complaint. It is their contention that when they realized that Police are not taking action as Police are involved in the case, they were required to rush this Court. It is their contention that when sanction could have been granted by the State Government, the State Government has refused to accord sanction and when case ought to have been filed for the offence under Sections 302 of IPC, the case is filed for offence of abetment of suicide.

11. The material collected by Police shows that accused No. 1 Mr. Vahile, was working as Police Inspector of Kotwali Police Station, Ahmednagar, at the relevant time. There are statements of aforesaid close relatives of the deceased and one Police Officer and they are to the effect that on 12-05-2007 at about 12.30 p.m. he had gone to residential place of deceased-Suman with four members of Police Staff, and from there, they had taken deceased to Kotwali Police Station, Ahmednagar. There is a statement of driver of police jeep. Here, only it needs to be observed that it will be duty of the trial Court to segregate truth from falsehood, as in most of the statements of Police Officers an attempt is made to see that the accused, Police Officers, do not get conviction.

This Court has carefully gone through the entire record and it shows that even when deceased was taken to the Police Station, accused No.1 did not create any statutory record in respect of bringing Suman there. When he had brought Suman on 12-05-2007 and apparently from that time, she was in the custody of Police, no record of her arrest was made and no entry of any kind in respect of Suman was made in Kotwali Police Station. These circumstances also can be used against him as there will be other direct and circumstantial evidence against him.

12. Accused Sonwane was attached to LCB and most of the allegations are against squad of LCB, which was prepared for detection of crimes of robbery and dacoity. There will be direct evidence that in the office of LCB, which is situated in the building of office of the Superintendent of Police, accused assaulted the deceased at least from 13-05-2007 to 14-05-2007. The deceased was not under arrest and so it was illegal detention as per the case of prosecution. There is statement of one witness, Advocate Mr. Shaikh to the effect that deceased died in Deepak Hospital and she had disclosed to him that Police had assaulted her. Whether his evidence can be believed or not, can be decided in trial, but at present it can be said that such material is against the Police Officers. There is statement of one Mr. Kisan Chavan showing that accused admitted that he had detained Suman.

13. Accused Deokar was PSI of LCB and Special Squad and he played role at Jamkhed rest house on 13-05-2007. On that day, he had stayed in Jamkhed rest house where Suman was taken and then tortured. There will be direct and circumstantial evidence in that regard.

14. Shivaji Sudrik was working as ASI and he was also attached to LCB, aforesaid squad. He was in-charge of log book of the vehicle and it shows that he was there to take deceased in the custody and then to detain the deceased. There will be evidence against him of the relatives of the deceased and Police Officer like Mr. Gore. There will be evidence against Mr. Deepak Haral, Mr. Ahilwal, and Mr. Sunil Chavan of similar nature.

15. Against Officers of LCB, there will be evidence of Doctor Smt. Sonali Gadhe @ Nikam. She was working as Medical Officer in Police Headquarters. The statement of Dr. Smt. Sonali Gadhe @ Nikam shows that she was called by the Police to examine the deceased, who had become unconscious in the office of LCB, which is situated in the building of office of Superintendent of Police. There will be evidence to show that she had helped the Police Officer to shift the deceased to Deepak Hospital. In ordinary course, she ought to have seen that deceased was shifted to Government Hospital, which was nearer than Deepak Hospital. The record is sufficient to create possibility at this stage that she helped the Police Officers in their attempt to screen the offence and she had gone to Deepak Hospital to see that particular kind of treatment was given to the deceased. Her police statement shows that attempt is made to see that she made enquiry with deceased at headquarters and deceased disclosed that she had consumed poison. In respect of this version of Dr.Smt. Nikam, relevant circumstances will be mentioned at proper place. Apparently, this witness could not have made such enquiry, as it is case of the Police Officer that deceased had become unconscious, and in that state, she was shifted to Deepak Hospital. In such cases the Court can

consider as to whether this accused can be treated as co-accused and she can be tried by using Section 319 of Cr.P.C. There is clear probability that she will help every way to the Police Officers.

16. Due to the way in which record is created by the Investigating Agency, it can be said that prosecutor of the present case needs to be very competent and impartial. He needs to take decision as to whether and which witness needs to be examined and examination of which witness needs to be avoided. In the say filed by accused in these proceedings, they have apparently taken false defence that the deceased was not shifted by them to Deepak Hospital and they had not arrested or detained the deceased. Due to aforesaid facts and circumstances on record, the trial Court will have to be very cautious and trial Court will be required to segregate truth from falsehood. For most of the pieces of evidence in such cases, Sections 106 and 114 of the Evidence Act need to be used.

There are following circumstances, which are some of the relevant circumstances:

- (I) The deceased Suman was picked-up by the Police from her residential place on 12-05-2007 at about 12.30 p.m. and in that incident five Police Officers, who are made accused, were involved.
- (II) The deceased was taken to Kotwali Police Station first, but no entry of incident of taking the deceased to Kotwali Police Station was made in record of Kotwali Police Station. No female member was included in the team, which had gone to residential place of the deceased,

when right from beginning the Police knew that they were going to bring a lady to Police Station.

- (III) There is no record to show that deceased was brought to Police Station by LCB. There is no record to show that deceased was allowed to leave either from Police Station or LCB Office from 12.30 pm. of 12-05-2007 till her death. As against this, there will be direct evidence to prove detention of Suman.
- (IV) The deceased was taken to Jamkhed rest house for the purpose of interrogation, but entry of that incident was also not made in Jamkhed Police Station. One of the accused as mentioned above had taken room in Government rest house and he was there on that day.
- (V) Near relatives of the deceased were not allowed to see the deceased from 12.30 PM. Of 14-05-2007 till the time of her death. The son of informant heard the shouting and crying of the deceased when torturing was going on.
- (VI) In Inquest panchnama and Post-mortem report the injuries, which were caused due to assault are mentioned. All of them were ante-mortem injuries and out of (12) injuries (09) injuries were caused due to assault. No explanation is offered in the say filed in the proceedings by respondents-accused.

(VII) In Deepak Hospital, aforesaid injuries were not noted.

There was also one injury showing that there was haemorrhage in brain, but papers of Deepak Hospital do not show that treatment was given in respect of head injury. In ordinary course, when there was injury to head, C T Scan would have been done but that did not happen.

(VIII) No MLC was prepared by Deepak Hospital. Even if it is presumed that there was suspicion that the deceased had consumed poison, the Doctors of Deepak Hospital ought to have prepared MLC and ought to have given information to the concerned Police Station about admission of Suman in the Hospital. No such record was created by Deepak Hospital and due to that inference is possible that Deepak Hospital and accused who is owner of that Hospital wanted to conceal everything and he acted as per the instructions, which he received from the Police. Apparently, some false record was prepared in this Hospital.

(IX) Police wanted to discover and seize gold weighing more than one Kilogram by making interrogation with the deceased. For that reason, she was picked-up from her residential place, but she was taken to different places and she was detained at different places as mentioned in the petition by Police Officers. The Crime Number in

which the inquiry was made is available and deceased was not shown as accused in that crime.

- (X) In the say filed by Police Officers, accused, in matters filed for compensation, they have denied that they had picked-up the deceased from her residential place, they had taken her to Kotwali Police station, to LCB Office, to Jamkhed rest house and then to Deepak Hospital. The record is otherwise. Even Dr. Gaikwad of Deepak Hospital noticed Police in Deepak Hospital as they were interested in seeing that nobody is able to meet and see Suman in the Hospital.
- (XI) Post mortem examination was conducted on the dead body on 16-05-2007. Nine injuries were ante-mortem in nature. There was one injury on head like contusion over both high parietal region of size of 18x14 cm. There was patchial haemorrhage in white matter. No explanation is there in respect of this external injury.
- (XII) Lungs, Liver and Kidney were found oedematers. Though these circumstances were there, Doctor reserved opinion as Doctor wanted to see report of chemical analyzer and Histopathology report and also doctor wanted to see scene of crime.
- (XIII) The chemical analyzer's report dated 01-09-2007 in respect of stomach wash of Suman is available on record. It shows that no poison was detected. Similarly, no

arsenic was detected. The Chemical analyzer's report shows that no poison and arsenic was detected in hair and nails. The CA report shows that ethyl alcohol, which was used for preservation of viscera and sodium chloride were detected in viscera. Thus, no poison was detected in Laboratory after chemical analysis of stomach wash, viscera, and also in nails and hair of the deceased.

(XIV) The C.A. report dated 01-09-2007 in respect of cloths of deceased, shows that blood was detected on the cloths, but no poison was detected even when saliva of the deceased found on the cloths.

If saliva and froth had come from mouth of deceased and she had consumed poison, which must have been in liquid form then some poison could have been detected in the aforesaid articles. That did not happen.

17. It is the contention of son and brother of the deceased that she was hale and hearty and she was not suffering from any disease of lungs, kidney or heart. She was so active in social life. The Investigating Agency did not collect any record to show that in the past she had received treatment in respect of any ailment. Due to her social life and status, it can be said that she was definitely in a position to get medical treatment, but record of such treatment is not available. In ordinary course, when Police are involved as accused, if she had received such treatment, they would have certainly collected that record as every other attempt is made to see that Police Officers are protected.

18. Though there are reports of Chemical Analyzer of aforesaid nature, there is opinion of three doctors of J. J. Hospital, Mumbai, dated 19-01-2009, which is as follows:

"Septic shock with pneumonia and Pancreatitis in case of poisoning (he most likely poison being organophosphorous compound), associated with multiple contusions as a contributor factor)."

In respect of head injury and injury to brain, these Doctors have given opinion that injury is unnatural and non accidental, but injury was not sufficient to cause death in ordinary course of nature. This opinion also shows the manner in which the investigation was done. In case of poisoning, the poison will be detected at least in nail cuttings and hair.

19. In ordinary course, the Court is expected to give more importance to the opinion of Chemical Analyzer. It is more concrete science and more conclusive than medical opinion. The Court can discard medical opinion if there is direct evidence and circumstance like above. If medical evidence is not convincing in the case like present one, the Court needs to trade very cautiously.

20. On the other hand, on 11-09-2007 three doctors of Government Hospital, Aurangabad, gave following opinion about cause of death:

"Shock due to multiple injuries on the different parts of body including head with poison."

In view of the opinion of Chemical Analyzer, if we delete possibility of the poisoning from the opinion of Doctors at Aurangabad, it can be said that it become a case of homicidal death. Homicide was committed by making assault. When there will be clear evidence that

deceased had sustained head injury of aforesaid nature, then the Court will be in a position to use aforesaid circumstances, if they appear to be convincing to the Court against accused persons.

21. The material collected can be used against both Police Officers and Doctor to prove that it is homicidal death, as it is the contention of accused that Suman died in the Hospital. If the deceased was in the custody of Police and then in the custody of Police and Doctors, some inference can be drawn by using Sections 106 and 114 of the Evidence Act against both of them.

22. So far as the defence of the accused and also the case of Investigating Agency of poisoning is considered, it can be said that in ordinary course as per procedure prescribed, the Police must have done frisking, personal search, which needs to be done at the time of arrest. The poison described would be ordinarily in liquid form insecticide and so it does not look probable that Police had kept bottle of poison in custody of the deceased. It does not probable that Police had allowed others to see the deceased and so there is no question of handing over of bottle of poison to the deceased by outsider. It was in powder form, it was not possible to consume it as it is. These circumstance create other probabilities also and that will be against accused persons. Some inference can be drawn from record created that entire treatment was given for poisoning case in Deepak Hospital. In ordinary course, Investigating Agency would have attempted to search for bottle of poison insecticide, which was used in the incident, but there is no such record for treatment purpose also the knowledge about nature of poison used is important. For all these reasons, case of poisoning, suicide does not

appear to be probable and the case of homicidal death appears to be more probable.

23. It is already observed that when it is the case of custodial death, the person, who had custody of the deceased, needs to explain things in view of provisions of Sections 106 and 114 of the evidence Act. When death took place in the custody, like, in the present matter, there is ordinarily no possibility of sustaining injuries accidentally. The Court can infer that injuries were caused to the deceased when she was in custody and it is case of homicide.

24. When there is a case of creation of false record for screening offences and offenders and when there will be charge for offence under Section 201 of IPC, the possibility of using offence of conspiracy punishable under Section 120-B increases and that can be used for homicide. Due to all these circumstances, this Court holds that in the case like present one, it is always desirable to frame charge of homicide, murder and in alternative charge for abetment of suicide. If such charge is there, it becomes easy for the Court to consider and appreciate the evidence of aforesaid nature. On this aspect, the cases reported in **AIR 1993 SC 2119 (*Dalip Singh and others Versus State of Haryana*)**, **AIR 2005 SC 402 (*Munshi Singh Gautam (Dead) and others S. Versus State of MP*)** can be referred. In the first case, conviction for the offence under Section 304 part I and in second case conviction for the offence punishable under Section 304 Part II of IPC was held possible. In these cases, there is also discussion as to how knowledge and common intention can be inferred.

25. The provisions of Sections 220 and 221 of Code of Criminal Procedure give discretionary power to trial Court to charge accused alternatively for two or more offences, if it is doubtful as to which of the several offences are committed. The power to frame charge under these sections is discretionary power and due to that this Court holds that it needs to left to the trial Court to take decision on this point. The trial Court needs to keep in mind that when in such a case, role played by accused is not certain due to circumstances, like, record was not created, but, there is evidence of other nature, each separate act of the accused can be considered as part of conspiracy. The huge quantity of gold was to be recovered and by conduct of avoiding to create record, possibility is created and room is made for drawing inference under various provisions of Evidence Act. In such a case, Sections 10 and 11 of the Evidence Act also become important. This Court hopes that trial Court will consider all these provisions. As there is right to the accused to make submissions before framing of charge, for that reason also, this Court is avoiding to give specific directions for framing the charge for offence punishable under Section 302 of IPC. On this point, learned counsel for petitioners placed reliance on some observations made at Principal Seat of this Court, in the case reported in **2019 SCC On-Line Bombay, 5806** (*Leonard Xavier Valdaris and others Versus Officer-in-charge and others*). In that case, a direction was given to frame charge for the offence of murder. For the reasons already given by this Court, this Court is avoiding to give such direction.

26. So far as point of sanction is concerned, this Court has no hesitation to hold that there is no necessity of sanction under section 197 of Cr.P.C. The circumstances mentioned show that the deceased Suman was not involved in any crime as accused. No summons was given for asking her to appear before the Police. No record of her arrest was created and no attempt was made to get authorization of her detention. In defence, these accused persons have denied everything about it by contending that the deceased was not picked-up and detained by them. The deceased was police informant and social worker. Many photographs are produced by the Police, accused, to show that in many police functions, she was invited and she was offered seat on dais. Thus, the police are admitted that they knew the deceased. The record already mentioned like visit of accused to residential place of the deceased to bring her to Police Station and then direct evidence of witnesses can be used to show that every act of the accused was unauthorized and illegal. It is not the defence of the accused in the say that they were discharging their duties. Further, when there will be charge for offences punishable under Sections, like, Sections 302, 201 and 120-B of IPC, it cannot be said that these acts were done during discharge or purported discharge of the official duty. The State Government, authority has given findings that in such a case there is no need to accord sanction under Section 197 of Cr.P.C. Due to all these circumstances, this Court holds that there is no need to interfere in the decision taken by the Government that sanction is not necessary and so this Court is not giving direction to reconsider its decision to accord sanction.

27. So far as relief of compensation claimed by legal representatives of deceased is concerned, aforesaid material is more than sufficient to prove that Suman died in the custody of Police. In the case reported in (1997) 1 SCC 416 (*D.K. Basu Versus State of West Bengal*), the Apex Court has laid down that in such cases compensation can be granted under public law by the High Court and this remedy is available as remedy in addition to remedy for tortious action and punishment to wrongdoer under criminal law. Reliance was placed by learned counsel for the petitioners on the decision given by the Division Bench of this Court in **Writ Petition No. 1548 of 2016 (*Ashok Kondaji Rokade Versus The State of Maharashtra and others*)**, dated 26-11-2020. In this case the deceased was about 16 years and compensation of Rs.5,00,000/- (Rs. Five Lakh only) was awarded.

28. In the present matter, the deceased was aged about 50 years. In such case, the multiplier can be applied higher than '10'. Rs.3,000/- (Rs. Three Thousand Only) per month can be presumed as income of the deceased. Thus, amount of compensation only in respect of loss of income and dependency can be around Rs.2,50,000/- (Rs. Two Lakhs Fifty Thousands Only). The deceased was tortured and relatives of the deceased were required to face all kinds of harassment and they were required to spend money and time for filing the proceedings in this Court and for agitating their grievances before the different authorities in many ways. Due to all these circumstances, this Court holds that successors of the deceased are entitled to get at least Rs.5,00,000/- (Rs. Five Lakhs only) as compensation. Even if less compensation is claimed, it is the duty of the Court to give appropriate compensation.

Hence, we proceed to pass following order -

ORDER

- I. Criminal Writ Petition No. 363 of 2008 and Criminal Writ Petition No. 1658 of 2015 are partly allowed.
- II. This Court has made some observations regarding the evidence, which is available for consideration of framing of charge for the offences punishable under Sections 302, 201 read with 120B of the Indian Penal Code and it is open to the Trial Court to consider that evidence at the time of framing of the charge.
- III. The compensation of Rs.5,00,000/- (Rupees Five Lakh only) is granted in respect of the death of Suman, and that amount will be disbursed among the L.Rs. of Suman. The son of Suman, who is petitioner, is to give the names of all the L.Rs. of Suman so that disbursement order can be made in their favour.
- IV. Initially, the amount is to be deposited by the State within 45 days from the date of this Judgment in the Court. If amount is not deposited within 45 days, the amount shall carry interest at the rate of 8% per annum.
- V. It will be open to the State to recover this amount from the respondents-Police Officers of the proceedings, who are mentioned as the persons responsible for the death of Suman after making necessary inquiry into it for that.
- VI. The stay granted to the trial of the Sessions case is hereby vacated.

- VII. The trial Court is expected to decide the case within six months from the date of receipt of this Judgment.
- VIII. Criminal Writ Petition No. 900 of 2011 is disposed of as withdrawn.
- IX. Criminal Writ Petition No. 139 of 2009 is dismissed.
- X. Rule is made absolute in aforesaid terms.

Sd/-
[**M.G. SEWLIKAR**]
JUDGE

Sd/-
[**T. V. NALAWADE**]
JUDGE

MTK