

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

948 CRIMINAL WRIT PETITION NO.1752 OF 2017

SALMAN S/O. MUSTAFA SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Suhas P.Urgunde
APP for Respondents-State : Smt.V.N.Patil Jadhav

...
**CORAM : V.K.JADHAV &
M.G.SEWLIKAR, JJ.**

DATE: 10th March, 2021

PER COURT:-

1. Heard finally with consent of the parties at the admission stage.
2. The petitioner is the son of the deceased Mustafa Rashid Shaikh. On the basis of complaint lodged by the petitioner on 03-07-2015, Crime No.126 of 2015 came to be registered. The petitioner has suspected the involvement of certain persons, who are his neighbours in the commission of the crime and accordingly filed complaint against them. It further appears that after completion of the investigation, charge-sheet has been submitted against Ahmad Sattar Pathan, who is son in law of the deceased. The petitioner has filed the present petition with a prayer for issuing directions to handover the investigation to

Local Crime Branch, Latur in connection with Crime No.126 of 2015. The learned counsel for the petitioner submits that the petitioner has filed a complaint dated 03-07-2015 against six accused persons. The Investigating Officer has neither arrested those persons nor registered crime against them. The learned counsel submits that admittedly there are various proceedings pending in the Court between the deceased and the persons named in the complaint as accused persons. The learned counsel submits that the Investigating Officer has not carried out any investigation and falsely impleaded son in law of the deceased in the crime.

3. Learned counsel for the petitioner submits that during the pendency of this petition, the petitioner has filed additional affidavit and pointed out that the Investigating Officer has seized CCTV footage of Shwas Hospital, near Savewadi. However, that said CCTV footage has not been submitted alongwith the charge-sheet. The learned counsel submits that the dead body was found in the well situated in front of the Hospital name and styled as "Shwas" and in view of the same, the CCTV footage of the said Hospital is necessary to find out involvement of the persons in the commission of the crime. The learned counsel submits that Dr.Sabde of the said Hospital has given CCTV

footage to the Investigating Officer and though said Dr.Sabde was ready to give his affidavit, however, he is not inclined to come to the Court to file his affidavit. The learned counsel submits that Dr.Sabde has given his consent for recording his statement by the Police to that effect. The learned counsel submits that even though this Court has given last chance to file affidavit of Dr.Sabde before the Court, however, the same could not be submitted for all these reasons.

4. The learned APP for the respondents-State submits that the crime was thoroughly investigated and it has been revealed in the investigation that the son in law of the deceased has involved in the commission of the crime. Accordingly, the Investigating Officer has submitted the charge-sheet. At present, the case has been committed to the Sessions Court and the said case is waiting for trial. The learned APP submits that the petitioner has not stated anything in his petition about the CCTV footage. Moreover, even if this fact about CCTV footage, as disclosed to him by Dr.Sabde, was within the knowledge of the petitioner way back in the year 2015, till filing of the petition, the petitioner has not disclosed the same nor he has disclosed the same in his complaint. Even after filing of the charge-sheet, for two years, the petitioner has kept mum and in the year 2018 for

the first time, the petitioner has come with the story of CCTV footage as disclosed to him by Dr.Sabde of Shwas Hospital. The learned APP submits that this entire exercise has been done to save the son in law of the deceased, who is now a prime accused in the commission of the crime.

5. The learned APP submits that during the course of investigation, the Investigating Officer has investigated into the allegations made against those persons named in the FIR. The petitioner has made the allegations against them on suspicion and during the investigation, their involvement in the crime was not at all revealed. The learned APP submits that there is no substance in the present petition and the petition is liable to be dismissed.

6. We have carefully gone through the contents of the petition. We have also carefully gone through the entire charge-sheet. Though we find that the complaint filed on suspicion against six accused persons, however, if further appears during the course of investigation, that involvement of six suspected persons was not revealed in the crime and on the other hand, the involvement of the son in law of the deceased came to be revealed in the commission of the said crime. Admittedly, the

dead body of the deceased was found in the well and the said well is situated in front of the Hospital name and styled as Shwas. Even assuming that Dr.Sabde of Shwas Hospital had disclosed the fact to the petitioner way back in the year 2015 about seizure of the CCTV footage by the Investigating Officer while investigating the present crime, however, the petitioner has not stated anything about the same in the petition. Even assuming that the petitioner was not knowing about it till the date of filing of the charge-sheet, however, charge-sheet was filed in the year 2015. After filing of the charge-sheet, we assume that the petitioner must have got the knowledge that the said CCTV footage is not the part of the charge-sheet. Even then, the petitioner has not brought the said fact to the notice of the Court by filing any additional affidavit or by amending his petition to that effect. It appears that for the first time in the year 2018, the petitioner has filed the affidavit before this Court stating therein the information disclosed to him about the CCTV footage by Dr.Sabde. Though, this Court has given last chance to the petitioner to file affidavit of Dr.Sabde, the affidavit of Dr.Sabde is not filed before this Court under this or that pretext.

7. Thus, considering the entire aspect of the case, we find substance in the submission of the learned APP that in order to

save the son in law of the deceased, the petitioner, who is brother in law and other members of the family are trying to protract the trial, which is pending against the son in law of the deceased. In view of above, we find no substance in the writ petition. Hence, we pass the following order.

ORDER

- I) Criminal Writ Petition is hereby dismissed.
- II) The observations made in this order are only for the disposal of this petition and it is for the Sessions Judge, before whom the trial is pending, to decide the said case on its own merits.

(M.G.SEWLIKAR)
JUDGE

(V.K.JADHAV)
JUDGE

SPT