

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

CRIMINAL WRIT PETITION NO. 719 OF 2021

Sau. Rajni w/o Kailash Wakde,
aged about 35 years, Occ. Labour,
Permanent R/o Mukkam Post Dhnlala,
Taluka Mauda, District Nagpur.

...PETITIONER

Versus

1. The State of Maharashtra,
through its Minister Department of Home,
Mantralaya, Mumbai – 440032.
2. The State of Maharashtra,
through Superintendent of Police,
Nagpur Rural, Office at Civil Lines,
Nagpur.
3. The State of Maharashtra,
through Deputy Superintendent of Police
and Investigating Officer, Mauda,
Police Station, Tahsil Mauda,
District Nagpur.
4. The State of Maharashtra,
through in charge Police Station Officer, Mauda,
Tah. Mauda, District Nagpur.
5. Additional Director General of Police,
State Crime Investigating Department (CID),
Maharashtra State Head Quarter near Pune University,
Pashan Road, Pune – 411008.

...RESPONDENTS

Mr. Firdos Mirza and Mr. Akash Moon, Advocates for the
petitioner.
Mr. T.A. Mirza, A.P.P. for the respondents/ State.

CORAM : M.S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.
DATE : OCTOBER 29, 2021.

ORAL JUDGMENT : (P.C.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. The petitioner - wife of the deceased Kailash Wakde, is seeking directions to transfer the investigation of Crime No.560/2021 registered by the Police Station Mouda, District Nagpur (Rural) for the offences punishable under Sections 452, 354 and 506 read with Section 34 of the Indian Penal Code (“**IPC**”) and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (“**SC ST Act**”) from the hands of respondent No.3 to respondent No.5 - the State Crime Investigating Department with a further direction to investigate the entire matter afresh to meet the ends of justice. The petitioner also seeks directions to respondent Nos.1 to 5 to register the offence punishable under Section 302 of the IPC and Section 3(2)(v) of the SC ST Act against the accused named in the FIR.

3. We have heard Mr. Firdos Mirza, learned counsel for the petitioner, and Mr. T.A. Mirza, learned A.P.P. for the respondents/ State.

4. The learned counsel for the petitioner submits as under :

i. That the petitioner is aggrieved by the inaction on part of respondent Nos.3 and 4 in investigating the homicidal death of her husband Kailash, and non-registration of offence of murder against the accused namely Rajendra Rajgire, Harshad Bawne, Pranay Rajgire and other responsible accused, and molding the investigation into totally wrong direction to defeat ends of justice in the matter. That the petitioner is further aggrieved by the incorrect and wrong recording of statements and fabrication and manipulation of statements of the petitioner with no steps of arresting the main accused Rajendra Rajgire till date.

ii. It is stated that the husband of the petitioner was plying Tata Ace transportation vehicle bearing No. MH-40-BL-7372. That on 07/09/2021, there was a festival of Tanha Pola, which is celebrated at Bazaar Chowk every year in the Village Dhanla. On that day, at about 10:00 am, the petitioner's husband had gone to Village Dhanla after breakfast by his motorcycle and the petitioner had gone to village for purchasing grocery and returned back to home at about 2:15 at noon. That time the deceased husband was talking with his mother and was wet. That time the petitioner requested him to change his clothes. The petitioner has also noticed blood on the left hand side near elbow. Then the deceased went with his Tata Ace vehicle towards Bazaar Chowk. Then the mother of

the deceased informed the petitioner that the deceased has taken Rs.1,500/- from her. Suspecting something fishy, the petitioner sent nephew namely Suraj Wakde after the deceased. At about 3:30 pm, while all the family members were sitting at the courtyard of their house, Suraj came back by motorcycle followed by the accused Rajendra Rajgire, Pranay Rajgire and Harshad Bawne in front of their house. They parked their vehicle near neem tree. They were carrying *lathis* in their hands. They were searching Kailash. The petitioner informed them that Kailash is not at home. At that time, the said accused persons said “you people are lying, you concealed him at home”, saying so, they pushed the petitioner and went inside the house and took search of the deceased and came back. The petitioner inquired them as to what has happened. At that time, Pranay Rajgire has informed that the deceased had given dash to his brother. They also abused the petitioner and used the caste remarks and further gave threats to kill the deceased Kailash and then went by motorcycle in search of the deceased.

iii. It is stated that, after some time, the petitioner, her mother-in-law and other persons noticed from their courtyard crowd of people near cremation ground. They went there to see as to what has happened. They found the vehicle of the deceased in a badly damaged condition. They noticed one stone, one *lathi* and *chappal* of deceased inside the vehicle. Some people, who are related to the accused namely Chandu Kekatpure, Keshawjit Lanjewar and Ramchandra Rajgire were present there along with the other people and started saying

that the deceased jumped in the river which according to the petitioner is highly impossible and improbable. Again, Pranay Rajgire came near the Tata Ace vehicle and pelted stone on it. Then again, the petitioners and other relatives had gone to river side. At that time, Keshawjit Lanjewar, surprisingly, gave the key of Tata Ace to the petitioner and said he is giving the key because Kailash had given the same to him. Thereafter, the petitioner took search of her husband till evening but he was not found. Then the petitioner, along with other family members, returned back to home.

iv. It is stated that the petitioner, then, along with her sister-in-law Salita Dhanpal Wakde and Haridas Wakde, went to lodge report against the aforesaid accused at about 7:00 pm. The in-charge police station officer and his subordinates refused to take the report. With the intervention of the MLA of the area, report of the petitioner was taken but not as per her narration and was not read over the same to the petitioner.

v. It is submitted that on the second day, i.e., on 08/09/2021, the petitioner and the other relatives had again started taking search of the deceased. The petitioner was informed by her relatives that the dead body of the deceased Kailash was stuck in the stagnant water of the river which is near the farm of Bala Rajgire. The petitioner reached the spot. She noticed several injuries including injury on left hand side near the elbow, swelling on forehead, injury on leg near knee and swelling on lips of the deceased. The police official arrived

at the spot and drew the inquest and spot panchanama. The body was taken for postmortem. The petitioner and her relatives were not ready for cremation of the body due to the death of the deceased under highly suspicious circumstances.

vi. It is alleged that even in the inquest panchanama, the police showed only one injury on legs near the knee, and other injuries though very much visible, are not mentioned in it. Police were reluctant to consider the death of the deceased as homicidal.

vii. It is alleged that the police station in-charge of the police station, deliberately, did not register the FIR till 10/09/2021, nor started investigation in the matter till 18:22 pm of 10/09/2021. It was found that the postmortem report of the deceased Kailash Wakde is not even obtained promptly and within reasonable time by the police officials for the best reasons known to them.

viii. It is alleged that to great surprise to the petitioner, the police station in-charge has registered the FIR only against Pranay Rajgire and Harshad Bawne, and not against the main accused Rajendra Rajgire for the offences punishable under Sections 452, 354 and 506 read with Section 34 of the IPC and Section 3(1)(r)(s) of the SC ST Act, thereby including only the middle incident of the house of the petitioner, and that too, by excluding the name of Rajendra Rajgire, who is the main accused in the crime. Even the basic report of the petitioner was of murder and homicidal death of the deceased husband.

However, to that direction, there was absolutely no investigation by the police authorities, and surprisingly, the said FIR was registered, which is in some part, not as per the say of petitioner, and incomplete. Even, the date of reporting the incident is intentionally mentioned as 10/09/2021, particularly when the entire incident of 07/09/2021 was already narrated at night to the police station. The petitioner is very much shocked and surprised by seeing the arbitrary and unfair conduct of the police station in-charge of the police station of exempting the main accused from the FIR and setting him free.

ix. It is alleged that no steps were taken for recording the statements of the witnesses namely Suraj Wakde and others, who have lastly seen the deceased and accused together, who were beating the deceased at Bazaar Chowk on the count that there was dash to the Rakesh Wakde by the vehicle Tata Ace of the deceased. There is also one witness namely Asha Shende, who was present at Bazaar Chowk and found the deceased being beaten by the aforesaid accused and others. The name of this witness is also informed to the police, however, they have not recorded her statement also till the date of filling of this petition. The police has failed, till date, to record the statement of all the witnesses, who have witnessed the incident at the house of the petitioner, most particularly, Dhiraj Wakde, his wife Padma Wakde and Tulsabai. Even the local Investigating Officer has failed to record the statements of the witnesses, who were present near the Tata Ace vehicle and

found the incident of causing mischief and damage to the Tata Ace vehicle of the deceased and putting the deceased to the death. The whole investigation into these aspects and also on the basis of said FIR is completely stalled and hampered.

x. It is stated that thereafter, on 21/09/2021, the police personnel visited the home of the petitioner and recorded her statement in which, for the first time, the police have written the entire incident which was stated to them well on 07/09/2021, where the name of Rajendra Rajgire was also mentioned as assailant for the first time. That time, the statement of Suraj Wakde, who has seen the aforesaid accused beating the deceased at Bazaar Chowk, was also proposed to be recorded being a key witness to the main chain of circumstance. However, same was not finalized or done at that time. It was stated at that time by the police officials that his statement shall be read over to him on next day. However, even thereafter, the police officials have not come for four days to record the statement, but came on 25/09/2021, and recorded the statement of Suraj Wakde and her mother for the first time 25/09/2021 again belatedly after the statement of the petitioner on 21/09/2021, which again cast doubt over the local investigating team.

xi. It is submitted that there are witnesses to the first incident, i.e., Suraj Wakde seeing the deceased being beaten by the aforesaid accused and others at Bazaar Chowk. When the deceased was assaulted, at that time, there were more than

100 people present at the spot. Thus, on his statement and the statement of the petitioner, there remains no doubt to the fact that the deceased was last seen with the accused, the accused were after him to kill him, and therefore, they had been to the house of the deceased to find him there, though there are many witnesses who have witnessed all three parts of the incident which have accrued in bright day light, however, though the petitioner has specifically informed the police orally and requested to put them under investigation, they are not recording their statements.

xii. It is stated that the postmortem report surprisingly mentions four visible injuries, out of which three are antemortem. From the said report, the fact of homicidal death of the deceased cannot be ruled out. From the postmortem report, it becomes very much clear that the local police officials have not drawn the panchanama correctly and in prejudice to the free and fair investigation in the matter.

xiii. The learned Counsel Shri. Mirza further submits that by no stretch of imagination, it can be said that the deceased shall himself jump into river and would die when the assailant were after him and hungry for his blood. There is evidence to show that the deceased was found lastly with the accused who were beating him, and in postmortem report, there appears to be injuries by which the fact of assault cannot be denied before his death. There is every possibility that the deceased is beaten mercilessly and thrown in the river or even

there may be other circumstances which are not put for investigation. The deceased was knowing swimming. All these factual aspects are still not investigated into by the investigating authorities which ultimately goes to benefit accused in trial, and therefore, it is stated that the investigation of the present matter is not safe in the hands of present Investigating Officer.

xiv. It is stated that even the statements of the witnesses in pursuance to the FIR for the offences stated above and into the factual aspect of homicidal murder of the deceased Kailash are recorded belatedly which would ultimately benefit the accused. The local police investigating wing, till this time, have not done free, fair and proper investigation into the instant crime, and therefore, the petitioner, being member of the Scheduled Caste and Scheduled Tribe, is subjected to infringement of her rights granted under section 15A of the SC ST Act. Therefore, the petitioner does not have faith in the local investigating agencies, and therefore, the investigation into the instant matter is required to be transferred to respondent No.5 with an authority to investigate the entire matter afresh into the homicidal death of deceased.

xv. The learned Counsel Shri. Mirza further submits that there is no explanation by the police station in-charge of the police station Mauda or even the Investigating Officer for not registering the FIR immediately on information, not reading out and explaining her statement to her on

07/09/2021, not registering the FIR for consecutively four days when information is already received on the same day, not recording the statement of witnesses for around 15 days, and most importantly, not investigating into the homicidal death of the deceased when the complaint dated 10/09/2021 calls for the same. Not only that, even the cell phone of the deceased, which is very substantive and corroborative piece of evidence, is surprisingly missing from the date of crime, and the same is not reportedly traced or recovered by the local investigating agency. All these serious irregularities and infirmities have damaged the entire case and taken out the very life in it. Therefore, it is submitted that the petitioner has lost all hope for justice, equity and fairness from the local investigating wing.

xvi. It is further submitted that as per the provisions of SC and ST Act, the local police officers and the Investigating Officer is duty bound to furnish all the information regarding day-to-day development in the investigation to the dependent or victim. However, here in this case, the police are not informing the petitioner about. In fact, investigation is brought to such a stage where the accused are getting free hands and set free from the heinous crime of murder.

xvii. The learned Counsel Mr. Mirza further submits that the police station in-charge of the police station, Mauda appears to have willfully and deliberately neglected his duties in not registering the FIR on very date of information and

registering the FIR on belated stage and with incomplete fact and incidents, in total wrong direction.

xviii. In support of his submissions, the learned counsel placed reliance on the following authorities :

i. **Rita Shailesh Vyas Vs. State of Maharashtra & Ors., 2005 ALL MR (Cri) 2741.**

ii. **Narayan s/o Sahebrao Karale Vs. The State of Maharashtra & Ors., 2020 ALL MR (Cri) 2107.**

5. Per contra, learned A.P.P. filed affidavit in reply stating therein that the wife of the deceased lodged report initially against two persons namely Pranay Rajgire and Harshad Bawne. In the report it is alleged that on 07/09/2021, these persons came to her house in search of her husband and abused her in the name of her caste. They gave threats to kill her husband.

The learned APP submits that the incident of 07/09/2021 came to be reported on 10/09/2021, i.e., after three days, and by that time, the petitioner was knowing that her husband had sank in the river. It is submitted that the petitioner has not explained any delay for lodging the report of incident dated 07/09/2021. It is stated that the petitioner has also given supplementary statement on 21/09/2021 in which she reiterated about the incident dated 07/09/2021 with addition that one more person Rajendra Rajgire was along with Harshad Bawne and Pranay Rajgire who abused the petitioner

in the name of her caste and also molested her.

It is submitted that the dead body of the deceased was found on the next day, i.e., on 08/09/2021. It is further submitted that during the course of investigation, the Investigating Officer initially registered accidental death about death of the deceased Kailash vide A.D. No. 49/2021 under Section 174 of the Cr.P.C.

It is submitted that during the course of investigation, the Investigating Officer has collected postmortem report, which indicates the death of the deceased is due to drowning. It is submitted that as per column No.17 of the postmortem report, there are four minor injuries in the nature of abrasion.

It is submitted that the eye-witness namely Chandrashekhar immediately informed the incident to one Shankar Deogade, who is residing near the house of the deceased to give message to the family of the deceased about drowning of the deceased Kailash. The Investigating Officer has also recorded the statement of Shankar Deogade.

It is submitted that the petitioner herself visited the police station on 07/09/2021 and lodged missing report about her husband, but she has not stated that her husband was drowned in the river when she got the knowledge about drowning of the husband of the petitioner, since the witness Shankar Deogade had already informed her on 07/09/2021

about drowning. Learned APP urged to dismiss the petition, being abuse of the process of the Court.

6. We have considered the rival submissions put forth on behalf of both the sides.

7. At the outset, we are conscious that while passing any order of transfer of investigation, the Courts must bear in mind certain self-imposed limitation with the constitutional powers under Article 226 of the Constitution of India. These extraordinary powers must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility to and instill confidence in investigations or where such an order may be necessary for doing complete justice (See : **State of West Bengal And Others Vs. Committee For Protection of Democratic Rights, West Bengal And Others , (2010) 3 SCC 571**).

8. We have perused the case-diary. The material in the case-diary would suggest that the genesis of the incident is the dash by the deceased to the brother of the accused by name Rakesh Rajgire, who was required to be admitted in the hospital. Keeping grudge in mind and to take revenge of the deceased, the brother and friend of the injured Rakesh came to the house of the deceased with sticks in their hands in search of the deceased Kailash. They criminally trespassed the house of the petitioner and molested her. They left the house with the threat that they would kill her husband and she should keep herself ready for his last rituals. It is alleged that in spite of

reporting of the alleged incident to the police station, the police refused to record her statement. Her statement could be recorded only on 10/09/2021, i.e., after three days of the incident.

9. Furthermore, as per the materials in the police case-diary, the deceased was reported to be missing on 07/09/2021 and his dead body was found on 08/09/2021 in suspicious circumstances. The vehicle of the petitioner was found substantially in a damaged condition. There is absolutely nothing in the case-diary about the investigation with regard to the damaged vehicle. The petitioner noticed several injuries on the dead body of the deceased Kailash. It appears that the investigation officer did not find it necessary to investigate into the cause for such injuries. The statements of the alleged eye-witnesses, as per the case of the petitioner, appears to have not been recorded deliberately. On insistence of the petitioner, the statement of the eye-witness Suraj Wakde came to be recorded belatedly, and it is alleged that the same is not recorded as per his version.

10. Having regard to the chronology of the event, as are discernible from the case-diary and from the case of the petitioner, it appears that there has to be a fair and impartial investigation into the suspicious death of the deceased. The police case-diary shows statements of many witnesses about knowledge of the accused persons went to the house of the deceased with sticks in their hands in search of the deceased.

In clear words, they gave threats to the petitioner to kill the deceased. There were injuries on the dead body of the deceased. It is alleged that the statements of the material and independent witnesses have not been deliberately recorded by the investigation officer and the statements which were recorded were fabricated and not recorded correctly. It appears that the statements of only interested witnesses have been recorded by the I.O.

11. In such circumstances, in our considered opinion, there should have been fair investigation in this matter. We are of the considered view that whatever investigation is done, is not at all satisfactory and is not made with the intention to find out the truth but obviously to dilute the gravity of the act of the accused.

12. Thus, we are inclined to hand over the entire case for fresh investigation to respondent No. 5 - State Crime Investigation Department. Respondent Nos. 3 and 4 are directed to hand over all the papers of the investigation to respondent No.5 immediately.

13. Rule is made absolute in the aforesaid terms.

(PUSHPA V. GANEDIWALA, J.) (M.S. SONAK, J.)