

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1097 OF 2022

PRAKASH S/O VITTHAL BONDIRWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. A. R. Borulkar, Advocate for the petitioner.
Mr. A. M. Phule, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.

DATE : 07.09.2022

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present writ petitioner has been arrayed as accused No.1 in Crime No.234 of 2022 registered with Bhokar Police Station, Dist. Nanded on the basis of FIR lodged by one Laxmibai Bhojiram Sonkamble. The petitioner has made following prayers :-

- "A) The Criminal Writ Petition may kindly be allowed.
- B) Record and proceeding be called for;
- C) By allowing this Criminal Writ Petition, kindly direct the respondent to collect necessary material in pursuance of the FIR bearing Crime No.0234/2022 registered on 26.06.2022 with Bhokar Police Station, Dist. Nanded for the offences punishable under Sections 452, 354, 294, 323, 504 read with Section 34 of Indian Penal Code and under Sections 3(1)(r),

3(1)(s), 3(1)(w)(i), 3(1)(w)(ii) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and for that purpose necessary orders be passed.

D) By allowing this Criminal Writ Petition, kindly the respondent to decide the representation dated 22.07.2022 submitted by the petitioner.”

2. Heard learned Advocate for the petitioner and learned APP for the respondent – State.

3. At the outset, it is to be noted that when the petitioner who himself is an accused whether can seek direction to be given to the police authorities/investigating agency to collect necessary material in pursuant to the FIR lodged against him itself is a question. The settled principle of law is that the accused has no voice in respect of how the investigating agency should make investigation. The accused may be having a defence, but that defence cannot be considered for collecting evidence. In other words, it can also be said that evidence cannot be collected to support the defence or the points that can be raised in defence. Investigation has to be impartial and should be undertaken from all the angles. Under such circumstance, we do not want to go into the points in defence those have been raised by the petitioner, which according to him are the points in support of his innocence. He has stated that the investigating agency should collect the location, CDR report and

necessary CCTV footage. If at all such recording is available, then the petitioner may himself produce it at the time of trial by following the parameters of law including those rules which are necessary to be followed while producing an electronic record.

4. We may take help of the observation of the Hon'ble Supreme Court's three Judge Bench decision in *Prashant Dagajirao Patil vs. Vaibhav @ Sonu Arun Pawar and another, 2021 Cri. L.R. (SC) 299 : 2021 (4) Cri.CC 698*. No doubt, those observations were pursuant to the directions given by this Court while deciding the application for bail, but it has been observed by the Hon'ble Supreme Court in respect of CCTV footage, which was directed to be collected on the request of the accused that :-

"9. A perusal of the impugned order indicates that the directions regarding the CCTV footage were made by the High Court on submissions by the counsel for the Respondents-accused before the High Court that they wished to rely on the same to prove their nonparticipation in the alleged incident. While the learned counsel for the Respondents-accused have attempted to submit before us that such an exercise is necessary, we are not in agreement with the same. When only the limited issue of grant of regular bail to the accused is pending consideration before the High Court, it was not appropriate for it to pass the aforesaid directions which will have a direct bearing upon the trial.

10. Thus, we are of the considered view that the direction of the High Court directing the Investigating Officer to examine the CCTV footage and to submit a report, is not sustainable in the eyes of law and deserves to be set aside.”

5. In view of the reasons stated above, no case is made out for exercising the constitutional powers of this Court under Article 226 of the Constitution of India. Hence, the writ petition stands dismissed.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

scm