

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

CRIMINAL WRIT PETITION NO.1177 OF 2022

X. Y. Z.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32,
- 2) The Superintendent of Police,
Ahmednagar, Tq. & Dist-Ahmednagar,
- 3) The Deputy Superintendent of Police,
Karjat Division, Karjat, Tq-Karjat,
Dist-Ahmednagar,
- 4) The Police Inspector,
Karjat Police Station,
Tq-Karjat, Dist-Ahmednagar.

...RESPONDENTS

...
Mr.Rahul R. Karpe Advocate for Petitioner.
Mr.R.V. Dasalkar, A.P.P. for Respondent Nos.1 to 4.
...

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

DATE OF RESERVING ORDER : 28th SEPTEMBER 2022

DATE OF PRONOUNCING ORDER : 14th OCTOBER 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Writ Petition invokes the constitutional powers of this Court under Article 226 of the Constitution of India seeking directions for transfer of the investigation to the higher Police Authority. The Petition is filed by the informant, father of minor girl, who wants to get redressal of the grievances of his minor daughter, aged 10 years. According to the father and the victim girl, the girl has been ravished by two persons known to the girl. According to the informant, he belongs to Scheduled Tribe.

2. Heard Mr. Karpe, learned Advocate appearing for the petitioner and Mr. Dasalkar, learned APP appearing for the respondents.

3. Learned Advocate appearing for the petitioner submits that present Petition has been filed on 24th August 2022, however, prior to that the petitioner was required to approach this Court by filing Criminal Writ Petition No.802 of 2022 for seeking registration of the First Information Report (for short "FIR") and after the notice was issued, FIR came to be lodged with the concerned Police Station vide Crime No.434 of 2022 on 20th June

2022, in respect of an incident that had taken place on 28th May 2022, for the offence punishable under Sections 363, 376(d) of the Indian Penal Code as well as Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(1)(w)(ii), 3(1)(w)(i), 3(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act as well as Section 3 and 4 of the Protection of Children From Sexual Offences Act. However, the investigation has been carried out by the investigating officer in *mala fide* way and since the accused persons belong to the political parties having deep roots with the political heavy weights in the State, investigating agency instead of collecting the evidence on the basis of the allegations made by the informant and the victim, have tried to conduct the investigation in a direction, as to how the petitioner and the victim are stated to be colluding with an Advocate who had some financial transactions with the proposed accused. In fact one of the accused had given even the blank cheque to the petitioner for not to lodge the FIR and not to go ahead with the grievances. Respondent No.4, Police Inspector, Karjat Police Station was duty bound to register the FIR in respect of serious and heinous offence but he had not taken any steps and therefore the petitioner was required to approach this Court. This also indicates as to how the accused persons are having man and

muscle power in view of their political connection. After registration of the crime, investigation was handed over to Respondent No.3, however, he has also not collected the appropriate evidence. All these grievances were communicated in his complaint cum representation dated 24th August 2022 by the petitioner to various authorities including Special Inspector General, Nashik, Superintendent of Police, Ahmednagar. The Petitioner is having grievance as the Police are calling him now and then and obtaining his thumb impression on various documents. Even when petitioner has given evidence in the form of the photographs of the accused with the victim and also the video shooting, the Police Officer had damaged the Mobile and also torn the photographs. The petitioner is being threatened by the Police Officers that he would be sent to jail. Further, it is obvious from the point of view that during the pendency of this Petition also Respondent No.3 has hurriedly done some investigation and filed "B" Summary Report before the Special Court. In fact the statement of the victim under Section 161 of the Code of Criminal Procedure as well as Section 164 of the Code of Criminal Procedure ought to have been considered by the investigating officer. On the contrary, he has unnecessarily come with the case that there was some financial transaction

between one of the accused with the Advocate who was then representing the informant and objecting the bail application filed by the accused persons and he concluded that the tower location of the informant was at a different place, tower location of the accused was at a different place and since February 2022 informant was not working with one of the accused. It is stated that a false FIR has been lodged. This is nothing but highhanded act on the part of respondent No.3 and therefore, the investigation needs to be handed over to some other officer of higher rank.

4. Per contra, the learned APP submitted with the support of the affidavit in reply filed by one Annasaheb Maruti Jadhav, the Investigating Officer i.e. Sub Divisional Police Officer, Karjat, Taluka-Karjat, District-Ahmednagar wherein it is stated that the investigation has been carried out and one of the accused, who is aged 75 years, was arrested on 23rd June 2022. His medical examination has been done. Accused No.2 could not be arrested as he was not found. Medical examination of the girl is conducted. She is aged 16 years. The CCTV footage of Karjat Police Station would show that the informant had never come to the Police Station as alleged by him. In the Writ Petition when

allegations were made that the accused offered blank cheque which was allegedly signed by son of one of the accused, it was revealed that said son, namely Sharad Kundlik Goykar, had lodged the FIR on 21st July 2022 against one Advocate Sumeet Kanhyalal Patil and Rahul Kanhyalal Patil alleging that they had given amount of Rs.5,25,000/- to him by way of loan and at that time eight blank cheques were taken as a security for the loan. As Sharad Goykar could not return the amount, Advocate Sumeet Patil had threatened him that he would lodge the FIR and then it is stated that he has managed the petitioner to lodge such FIR against the father of Sharad Goykar. It was also revealed in the investigation that accused Ankush Jamdar, at the relevant time, was attending a wedding function at a different place and statements of witnesses to that effect as well as photographs from the wedding have been collected. As thorough investigation has taken place and there was no evidence against the accused, therefore, report under Section 169 of the Code of Criminal Procedure was filed before the Special Court. The said report has been scrutinized by the District Central Scrutiny Committee constituting District Government Pleader, Additional Superintendent of Police and the Police Inspector of Protection of Civil Rights. The learned APP submitted that under such

circumstances there is no necessity to handover the investigation to any other agency. It was also stated that when "B" Summary Report has been filed, the Special Court would definitely issue notice to the present petitioner and the petitioner will have the option of filing protest petition. Therefore, when there is alternate remedy available to the petitioner, there is no question of invoking the constitutional powers of this Court.

5. At the outset, it will have to be observed firstly that each case will have to be investigated by the investigating officer with utmost sensitivity. When it is a case of heinous crime like rape then the law as well as the Courts expect utmost sensitivity from the police officers. No doubt the investigating officer has to carry out the investigation in impartial manner and he is not supposed to take side either of the petitioner or the accused but suffice it to say that he should not succumb to any kind of pressure i.e. political or even financial. As regards invoking of the constitutional powers of this Court are concerned, definitely if this Court comes to conclusion that the investigation that has been done or is tried to be done in a particular way only and there is element of political or financial power, then definitely the

situation demands, to protect the personal and fundamental rights of the victim, that this Court should interfere.

6. It appears that the struggle of the petitioner and the victim started much prior to this Petition, rather it was immediately after the alleged incident. The date of incident is 28th May 2022 and when no FIR was registered though complained of and even the Superintendent of Police appears to have not responded, the petitioner was required to approach this Court. After the notice was issued in respect of the said Petition, it appears that the FIR was got registered and ultimately when FIR was registered, that Petition appears to have been withdrawn. At that point of time the petitioner might not be expecting that the investigation will not be done in proper way by the investigating officer. But unfortunately, he is required to come to this Court once again by way of this Writ Petition. The FIR was lodged on 20th June 2022 and thereafter, it appears that on 24th August 2022 the petitioner had also given complaint application to various authorities including the Superintendent of Police, informing as to what kind of harassment and pressure has been put on him by the investigating officer.

7. Entire investigation papers have been produced on record. The affidavit-in-reply filed by respondent No.3 can be termed as defensive affidavit and he wants to show as to how he was right in approaching / investigating the said matter. He has conveniently not referred to the statement of the girl under Section 164 of the Code of Criminal Procedure and the evidentiary value that could be attached to that statement. If we consider the investigation papers, it can be seen that the FIR is supported by the statement of the victim under Section 161 of the Code of Criminal Procedure, her statement under Section 164 of the Code of Criminal Procedure as well as her medical certificate. The medical certificate though states that no injuries were found on her private part, yet possibility of sexual intercourse could not be ruled out. The investigating officers appear to have forgotten the fact that the incident had taken place on 28th May 2022 and her examination was done at about 12.20 a.m. on 21st June 2022. There appears to be no investigation as to where exactly the girl was taken and whether any other person has seen the girl being taken by the accused. The mother of the girl is also supporting the statement. Now the story that has been developed and tried to be investigated in a way that since February 2022 the father of the victim was not

working with accused Ankush Jamdar. However, it is to be noted that in the FIR as well as in the statement of other witnesses it has come that the petitioner is residing along with his family members in the field of accused Ankush Jamdar. Whether the petitioner was introduced by accused Kundlik Goykar to accused Ankush Jamdar or through anybody else, could not have been part of investigation at this stage, but unnecessary details appear to have been tried to be extracted by respondent No.3. Further major part of the investigation appears to be consumed showing that accused Ankush Jamdar was at a different place on the alleged date. Statements of certain witnesses have been recorded in that respect. No doubt when we have already stated that the investigation should be impartial then the investigating officer should also make an endeavour to see whether the accused was present at a particular place or not, but at the same time while brushing aside the entire theory of the petitioner, the time, distance etc. should also be taken into consideration.

8. Now the investigating officer says that the FIR is the outcome of instigation by an Advocate. Important point to be noted is that the Advocate appears to have come in picture after registration of the offence and not prior to that and therefore,

the question of allegedly handing over the cheque signed by the son of accused Kundlik Goykar ought to have been considered from different angles. We have our own limitations to consider the evidence collected and to make any kind of comment but all these observations are to consider as to whether the investigation that has been done up till now was proper or not and whether there is necessity to hand it over to some other agency. Taking into consideration the entire documents as well as the investigation done up till now, definitely the case is made out to hand over the investigation to another officer, as there appears to be some political pressure on the investigating officer.

9. It appears that during the pendency of this Petition, accused No.1 Kundlik Goykar has been released under Section 167(2) of the Code of Criminal Procedure on 22nd September 2022 by the learned Special Judge, Shrigonda, District-Ahmednagar. Interesting point to be noted is that "B" Summary Report was filed by respondent No.3 with the Special Court on 29th August 2022 and on the same day order has been passed by the learned Special Judge to issue notice to the informant and victim. Under such circumstance, whether application under Section 167(2) of the Code of Criminal Procedure was

maintainable and that too for which accused could have been kept in custody till 22nd September 2022, is also a question. However, we need not go into those aspects. Suffice it to say that when this Court is of the opinion that proper investigation appears to have not been made, then the said grievances will have to be redressed. At the cost of repetition, it can be said that it would be a fundamental right of a citizen to have fair and impartial investigation in respect of his grievances by an investigating agency, then definitely this is a case where the constitutional powers of this Court deserve to be exercised. Hence the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The investigation of Crime No.434 of 2022 registered with Karjat Police Station, Karjat, District-Ahmednagar is handed over to Mr. Ajit Bhagwat Patil, Sub Divisional Police Officer, Nagar Rural Division, Nagar, District-Ahmednagar and it would be under the direct supervision of District Superintendent of Police, Ahmednagar.

(III) Till the investigation is over by the investigating officer to whom now the investigation is handed over,

learned Special Court, Shrigonda shall not proceed with further steps on the "B" Summary Report that has been produced before him.

(IV) Upon the investigation, the report be submitted by the investigating officer, to whom now the investigation is handed over, directly to the Special Court, and thereafter the Special Court to take further steps as provided under law.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE