

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

CRIMINAL WRIT PETITION NO.1229 OF 2022

**BANSI PEMA PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Shekade Shashikant E
APP for Respondent No. 1 : Mr. S.D. Ghayal

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

DATED : 03 OCTOBER, 2022

PER COURT:-

1. Heard learned Advocate Mr. Shekade for the petitioner and learned APP Mr. Ghayal for the respondent No. 1.
2. By invoking the constitutional powers of this Court under Articles 226 and 227 of the Constitution of India as well as under the inherent powers of this Court under Section 482 of Cr.p.c., the petitioner who is the original informant seeks direction for handing over the investigation of Crime No. 126/2022 dated 01.08.2022 registered with Chaklamba Police Station, District Beed, for transferring it to C.I.D. Superintendent of Police, Aurangabad.
3. The informant's daughter got married around eight years prior to the date of incident with one Sunil Kisan Rathod

and according to the Informant, the husband, in-laws and brother-in-law of the deceased used to treat the girl with cruelty by assaulting her, abusing and insulting her. According to him, he had called meeting of the persons and with the help of the respectable persons from his community and tried to persuade the accused persons that they should not treat the daughter with cruelty. However, they continued their behaviour. He received information around 04:45 p.m. on 31.07.2022 from accused No.1 and according to him, he had told the Informant that his daughter has been murdered and her dead body has been hanged to the Neem tree in their field. Thereafter, when Informant confirmed the said fact from another person, he also told that the girl has been hanged, informant went to the village where the girl was staying along with his relatives. He saw the dead body. After the inquest panchnama and postmortem, the dead body was handed over to the Informant and it is then stated that after conducting the last rites, he has filed the FIR. It has been contended in this petition that the Investigating Officer is proceeding with *mala fides* and is not conducting the investigation properly. All those incidents have been stated in the petition. It is also then stated that the accused No.1 had consumed poison and later on, he was hospitalized at Beed Hospital, Beed. Someone had intimated the said fact to the police and then, two constables were deployed. Objection has been taken by the petitioner that the Investigating Officer as well as Dy.S.P. were acting to help the accused persons and though, the accused No. 1 was taken in custody from the hospital

without praying for the police custody, directly the judicial custody has been sought. When the other accused persons filed application for anticipatory bail to the Sessions Court, Beed, it was opposed by the petitioner and by that time also the statements of the relatives were not seen in the police papers. The investigating Officer was insisting that it is not a case of murder but it is a case of suicide. The petitioner had given representation to Superintendent of Police, Beed, as well as DIG, Aurangabad, pointing out that the investigation is not fair and it should be transferred. However, that representation has not been considered, hence this petition.

4. Affidavit-in-reply has been filed by Sub-Divisional Police Officer, Georai Division, District Beed. Swapnil Rajaram Rathod stating that he is denying all the allegations against him as well as the Investigating Officer. But, in view of the allegations against the Investigating Officer further investigation has been handed over to the API Nawale who is In-charge of the Police Station. In his affidavit, he has stated that as to how the investigation is progressed and what has been done uptill now. It is stated that at the time of drawing inquest panchnama, the brother of the deceased was present and he has signed the said document. In fact, after it was made known to the Investigating Officer that the accused No. 1 has been admitted in a particular hospital and upon the tip that he is in the process of taking discharge against medical advice, he was immediately nabbed. By reserving the right of the police custody the magisterial

custody was asked, accordingly, it was granted. Statements of the relatives have been recorded, so also, the statement of the child of the deceased has been recorded and the children are presently at the Shishugrah. In order to protect the life of those children the Investigating Officer had taken steps to give the custody to those children to the Shishugrah and now, there is move to shift them as per the orders of Children Welfare Committee, Beed. The statement of the daughter of the deceased who is aged five has also been recorded under Section 164 of Cr.p.c.

5. Both the sides have made submissions in support of their contentions. What is required to be noted is unfortunately a girl has been died and the investigation has to be carried to see as to how she expired and to collect the evidence in respect of cause of her death. The photographs have been produced. All the possibilities are then required to be considered though the sole eye witness who appears to be five years old daughter at present appears to be stating that it is a suicide by the mother. Another aspect that is also required to consider is that the Informant, other relatives and also the villagers who knew the facts, should support the investigating agency. The postmortem report gives probable cause of death as “death due to hanging”. However, it is stated that the final opinion will be given after chemical analysis report. When the facts have further proceeded and it has come on record that the accused No. 1 appears to have tried to commit suicide by consuming poison then the

Investigating Officer has not even added 309 of IPC. It has been submitted on behalf of the petitioner that even the statement of the daughter has been recorded after the co-accused had approached this Court for getting anticipatory bail. Investigation has to be done from all the angles. The crime scene would give answers to many questions and it appears that some of the factors have not been considered by the Investigating Officer as to whether the height was sufficient to hang the lady by herself or this could have been the act of somebody else. So many other factors depend upon the answer to this question and for that purpose the necessary facts are required to be gathered. The statements made in the spot panchnama which have been reflected in para No. 9 of the order passed by the learned Additional Sessions Judge, Beed, in the bail application dated 25.08.2022 were important and under this circumstance, definitely a thorough investigation is required.

6. We do not want to go into the aspects of the allegations against Dy.S.P. and also the alleged recording that has been done. Suffice it to say, he was not the Investigating Officer though representation or being the superior from the area the Informant might have approached him but since the allegations have been made, it would be a fit case where the investigation should be handed over to the Local Crime Branch. It has been stated that it is headed by Police Inspector and he carries out the investigation directly under the control of Superintendent of Police. In view of this fact, the Writ Petition

stands partly allowed. The investigation of Crime No. 126/2022 registered with Chaklamba Police Station, Beed, stands transferred to C.I.D., Crime Branch, Beed. It should be carried out by the Police Inspector directly under the supervision of Superintendent of Police, Beed.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]