

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

912 CRIMINAL WRIT PETITION NO. 1125 OF 2021

**JANARDHAN S/O SHIVDAS DHAVAL
VERSUS
THE STATE OF MAHARASHTRA AND ORS.**

Mr. R. S. Patil, Advocate for the petitioner
Mr. M. M. Nerlikar, APP for the respondent/State

**CORAM : SARANG V. KOTWAL AND
BHARAT P. DESHPANDE, JJ.**

DATED : 12th July, 2022

P. C.:-

1. This writ petition is for transfer in the investigation in to Crime No. 0073 of 2021 dated 28th April, 2021 registered with Malakoli Police Station to CID. The offence was registered under Section 306 read with Section 34 of the Indian Penal Code and for the offence punishable under Section 14(A) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

2. We have heard the learned counsel Mr. R. S. Patil, for the petitioner and the learned APP Mr. M. M. Nerlikar for the

respondent/State.

3. The FIR is lodged by one Janardhan Shivdas Dhavale on 28th April, 2021. He has stated that his father Shivdas was a social worker since past 20 years and he used to raise voice wherever he found any suspicious incident or some offence. According to him, those persons who were affected by his action, used to harass him. The FIR specially mentioned that 20 years ago in village Chaundhi, Survey No. 64, 32 33, four deers and ten peacocks were killed and for that he had made representations for taking action and for making inquiry. He had given warning to the Forest Department that he would immolate himself on 28th April, 2021. On 27th April, 2021 at about 8.00 p.m. he left his house. On the next day in the morning the informant received a phone call from his brother telling him that his father Shivdas had set himself on fire and had committed suicide. Before committing his act he has written a suicide note in which he had mentioned six names. According to the first informant those persons were responsible for forcing the informant's father to commit suicide. On this basis FIR is lodged.

4. Learned counsel for the petitioner submitted that the police have not investigated the FIR seriously. During hearing of the bail application, the suicide note was not produced before the Court. The police were helping the accused. Some important witnesses' statements were not recorded. Some confidential information was provided by the police to the accused. Learned counsel further submitted that by supplementary statement the informant had explained that the incident of killing those animals had not taken place 20 years ago but was a recent incident. Some body parts of those animals were recovered and thereafter his father had made various representations.

5. Learned APP submitted that the investigation is completed and charge-sheet is filed against the six persons named in the FIR.

6. We have considered these submissions and we have also perused the affidavit-in-reply filed on behalf of the investigating officer. In the affidavit-in-reply it is mentioned that the petitioner has remedy to approach the Trial Court by way of application under

Section 173(8) of the Code of Criminal Procedure for further investigation. The FIR was diligently investigated and the accused were arrested. The suicide note was seized. They have recorded statements of witnesses and drawn the spot panchnama and seizure panchnama. The suicide note was seized under a panchnama dated 28th April, 2021. The note was sent to the Handwriting Expert at Aurangabad. Since it was already sent to the Expert's office, it was not part of the investigation papers when the prayer for bail was considered in the Criminal Appeal No. 276 of 2021 and Criminal Appeal No. 278 of 2021. However, the seizure panchnama of suicide note was produced and the Court was made aware of the fact that the deceased had implicated those accused in the suicide note. It is mentioned that there was no lacuna in the investigation and after completion of investigation the charge-sheet was filed in the Sessions Court at Kandhar on 25th March, 2022 and at present the Special Case No. 16 of 2022 arising out of the same is posted for appearance of the parties.

7. From the affidavit-in-reply we are satisfied that the

Investigating Agency has done what they needed to do. In fact it is difficult to understand how offence under Section 306 of the Indian Penal Code is made out against the accused who are mentioned in the suicide note. The incident of killing of those animals is a separate incident for which the police can launch separate investigation. As far as the offence of 306 of the IPC is concerned the grievance in the FIR was that since the authorities did not take steps in investigating the killing of the animals the deceased had taken that extreme steps. There is nothing in the FIR or even in the suicide note to show as to how the accused had instigated the deceased in committing suicide. His main grievance was that since the offence of killing of animals was not investigated, he had warned the forest authorities that he would commit suicide. That being a case, we do not see as to how the investigating agency had helped the accused. In fact they have filed charge-sheet against them, though, prima facie, the case against them doesn't appear to be strong enough. In this view of the matter, we do not think that it is a fit case where the investigation needs to be transferred. The charge-sheet is already filed and the matter is posted

for hearing. Therefore, it is better if the trial proceeds further and the prosecution proves its case. The petitioner who is the son of the deceased will have an opportunity to appear in the trial Court and give his evidence. The suicide note is already seized by the investigating agency and it is part of the charge-sheet. In this view of the matter, there is no reason to transfer the investigation. The police have sufficiently done what they were supposed to do. We do not see any mala fide intention in their actions and therefore, this writ petition is dismissed. It is made clear that the observations regarding the merits of the matter and about application of Section 306 of the IPC; are strictly limited to the decision of this writ petition. Those observations shall not have bearing on any other proceeding including the trial. In this view of the matter nothing further survives in the petition. The writ petition is dismissed.

BHARAT P. DESHPANDE, J.

SARANG V. KOTWAL, J.