

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 930 OF 2021

Kalyan S/o Dadarao Tirukhe

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr. R. V. Gore, Advocate for the petitioner.

Mr. M. M. Nerlikar, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI &  
R. M. JOSHI, JJ.**

**DATE : 18<sup>th</sup> JANUARY, 2023.**

PER COURT : ( Per : R. M. Joshi, J.)

1. This petition is filed under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure seeking direction to the police to add Sections 302, 120-B and 201 of the Indian Penal Code in Crime No. 190/2021 registered with Badnapur Police Station, to direct further investigation of the said crime through different Investigating Officer and to cause arrest of the accused persons. Petitioner has also sought departmental enquiry against Respondent No. 4 – Investigating Officer for serious lapses.

2. The backdrop in which the present petition came to be filed can be narrated in a nutshell as under :-

On 10<sup>th</sup> July, 2021, Kalyan Tirukhe, the petitioner, lodged a report stating that his son Vishal was in love with a girl. Their relationship was not approved by the girl's family. It is alleged that on 18<sup>th</sup> June, 2021, at about 9.00 pm, Uddhav Chaudhari, paternal uncle of the girl and one Vishwambhar Tirukhe, came to his house and threatened Vishal to sever his relations with his niece and warned him of dire consequences. Vishal responded by saying that infact the girl is in his love and that they should advise her. It is alleged that Vishwambhar called the girl to the house of the informant and asked her not to continue the relationship with Vishal and when she refused to the same, Vishwambhar slapped her and threatened to cause their death if they continued with the relationship. Thereafter at about 10.00 pm, Vishal left the house informing them that he was going to his work place. On the next day, at around 10.15 am, Sarpanch of the village Daregon informed him that Vishal was found dead on railway track at Dawalwadi. He went to the spot along with his relatives. He informed the police that, Vishal had committed suicide because of the threats given by

Vishwambhar and Uddhav. On the basis of the said report, crime came to be registered vide C.R. No. 190/2021.

3. In the course of the investigation, the petitioner submitted complaint dated 10<sup>th</sup> July, 2021 stating that investigation into the said crime is not conducted properly. He alleged that mobile phone of Sunil Gairwal which was with deceased Vishal was not seized though found at spot. Similarly, Call Detail Records of the accused and their family members were not obtained. He further alleged that Ankush, friend of Vishal, who was with him was not interrogated. The petitioner raised a grievance that the investigation was conducted in a casual manner without investigating into the additional material brought to the notice of the Investigating Officer.

4. Learned advocate for the petitioner submits that under Article 226 of the Constitution of India, as well as under Section 482 of the Code of Criminal Procedure, this Court has ample powers to direct the police to carry out further investigation and to change the Investigating Officer. In order to support his submissions, he placed reliance on :-

*i) State of Punjab vs. Central Bureau of Investigation & others  
2011 AIR (SC) 2962.*

*ii) Neetu Kumar Nagaich vs. State of Rejasthan and others  
2020 AIR (SC) 5267.*

*iii) Dattaram A. Awate vs. State of Maharashtra  
2005 BCI 18*

5. Learned counsel for the petitioner referred to the complaint dated 10<sup>th</sup> July, 2021, made by petitioner bringing certain material facts to the notice of police. Attention of the Court is drawn to the charge-sheet in order to submit that paternal uncle of the girl and Vishwambhar had threatened to cause death of the girl and Vishal and immediately thereafter, Vishal was found dead in suspicious circumstances. He submits that the additional material brought to the notice of the Investigating Officer despite of which he has conducted investigation in the most casual manner. He, therefore, submits that this is a fit case wherein further investigation needs to be ordered to unearth the conspiracy of murder. Learned counsel for the petitioner further submits that witness Sunil Gairwal though was a friend of the deceased, he had close acquaintance with the family of the accused and therefore, he interfered in the investigation by taking possession of the mobile phone from person of

deceased at the spot. It is also submitted that failure to collect CDR of mobile phones of the accused and their relatives indicates that the investigation in this case was done in shoddy manner and to protect the accused persons. It is also argued that though the railway track passes nearby from the village where petitioner stays, the dead body is found at a distance of 6 kms. which circumstance is unnatural and supports case of petitioner of murder of his son.

6. Learned APP submitted that the investigation into the crime is already complete with filing of the charge-sheet. He submits that the statements recorded during the course of investigation indicate that the deceased being frustrated by opposition of both the families for his love relations, has committed suicide. He drew attention of the Court to the statements of the friends of the deceased which according to him demonstrate that the status kept on his WhatsApp as "Good Bye" and his conversation with them clearly indicate the fact that it is a case of suicide and not murder as claimed by the petitioner.

7. There cannot be any dispute over the powers of Constitutional Court to issue directions in appropriate case even for

de-novo investigation, where it comes to the conclusion that investigation has been done in a manner to help some one escape clutches of law. The Hon'ble Apex Court, in the case of Neetu Kumar Nagaich (cited supra) has referred to observations made in Kashmeri Devi vs. Delhi Administration, (1988) Suppl. SCC 482, thus :-

*“ A fair investigation is as much a part of a constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair. The observations in this context in Babubhai (supra) are considered relevant at paragraph 45 as follows : “45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India.*

*Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.”*

8. Thus, the Court is expected to consider the entire material placed before it and to ascertain whether the investigation has been conducted properly and in objective manner and if the answer is in negative, there is no impediment in directing further investigation through different Investigating Officer or even with the help of an independent agency to secure the ends of justice.

9. In order to issue directions to the investigating agency to investigate into the offence of murder as claimed by the petitioner, it must be shown that there exist at least reason to suspect akin to “reason to suspect” contemplated by Section 157(1) of Code of Criminal Procedure, which circumstance mandates police officer to proceed with investigation of a cognizable offence. Such claim should be prima facie entertainable from the facts and circumstances and material available on record. For this purpose, grievance of petitioner needs to be appreciated by taking into consideration the material collected during investigation so also other circumstances sought to be projected by him.

10. The First Information Report lodged on 20<sup>th</sup> June, 2021 i.e. immediately after disclosure of death of Vishal is with contention

that due to the threats given by paternal uncle and Vishwambhar, Vishal committed suicide. It is on 10<sup>th</sup> July, 2021, that the petitioner approaches PI of the concerned police station seeking investigation of the crime for the offence punishable under Section 302 of the Indian Penal Code. One of the reasons for suspecting that it is a case of murder and not suicide is that alleged circumstance that mobile phone of Sunil Gairwal was with deceased Vishal and that there is nothing to indicate that the said phone was seized from the spot. It is also contended that CDRs of accused and other relatives have not been obtained and since the dead body was found at a distance of 6 kms. from the village, the suicidal death is doubtful.

11. It is pertinent to note that during the course of investigation, supplementary statement of the petitioner was recorded, wherein he has stated about the incident occurred on 18<sup>th</sup> June, 2021. Though initial part of the incident about the paternal uncle and Vishwambhar questioning Vishal about their relationship, the girl being called and slapped is consistent however, in the later part of the statement, the petitioner himself states that “तेव्हा विशाल त्यांना म्हणाला की विनाकारण तिला मारहाण करू नका मीच तिचे लग्न

होईपर्यंत एक वर्ष बाहेर जाऊन राहतो.” Thus, statement of petitioner runs contrary to his claim that on that day, Vishal and the girl were threatened to be killed by her relatives. On the contrary, it indicates that deceased had himself offered to stay away from her till her marriage.

12. Furthermore, the statements of the friends of Vishal indicate that in the night of 19<sup>th</sup> June, 2021, they found ‘Good Bye’ status on WhatsApp of Vishal and therefore Sunil called him on his phone and asked his whereabouts. Vishal told him that he is near railway gate and hence he immediately went to the said place in in his search but Vishal was not found. At that time, he saw Vishal Dhawale who had also come near the railway gate after having noticed the status on WhatsApp of Vishal. The statements of Sunil, Akash, Vishal and Shivaji show that they tried to search Vishal but he was not found. Infact, Vishal had told them that if they try to search him, they wont be able to find him. The statements of these witnesses prima facie suggest that Vishal knew that his friends were trying to search him. Hence, the possibility of him going to further distance on railway track in order to make sure that they did not find

him, cannot be ruled out. This circumstance explains finding of the dead body at a distance of 6 kms from the village.

13. It is also to be noted that Sunil as well as paternal uncle of deceased Vishal were panch witnesses to the Spot Panchanama. The spot panchanama drawn in presence of the close relatives cannot be doubted at this stage. In such circumstances, there is no supporting material to accept the contention of the petitioner that Sunil took mobile phone from the dead body of Vishal.

14. Post Mortem notes indicate that there was one crush injury on the head with fracture of all carnial and facial bones and other injuries were multiple graze abrasions and lacerated wounds. Apparently, these injuries are possible in case a person is hit by a running train. As far as allegation of the petitioner about non-obtainment CDR is concerned, the record indicates that subsequently CDRs of the concerned persons were obtained, but the same were not found useful to support the claim of the petitioner in any manner.

15. No doubt, in the case of Neetu Kumar Nagaich (supra), the Hon'ble Apex Court, after taking into consideration the facts of the said case, has recorded a finding that the nature and number of injuries on the dead body make it evident that it was a homicidal death and not accidental or suicidal in nature. Similarly, there were other circumstances such as the fact that deceased was not alone but was in the company of his friends and that after the incident the entry register of the hostel found his initials signifying his return to the campus with explanation of one of his friends that he has made the entry by mistake. The Apex Court ordered further/fresh investigation in view of these circumstances which were held to be relevant. In our considered opinion, in the instant case, there is no reason to believe that the investigation is unfair and there are no circumstances which warrant further investigation.

16. We have minutely and carefully gone through the entire record and as discussed hereinabove, we do not find any circumstance indicating homicidal death of deceased Vishal. Even if the allegation of the petitioner that Sunil is closely related to the family of the deceased is accepted, the statements of other friends of deceased indicate that being aggrieved by the opposition of family

members to the relationship, Vishal took the extreme step to put an abrupt end to his life. The status “Good Bye” kept by him on his WhatsApp as well as his conversation with his friends at this stage suggest that he committed suicide.

17. The petitioner, being father of the deceased is in grief and pain due to untimely death of his young son. Though the incident is unfortunate, this Court, however, cannot get influenced by the emotions of father, but is expected to consider the material available on record rationally and with objectivity. Merely because petitioner feels that his son could have been murdered, no direction in that regard can be issued unless there is at least some material on record minimal to suspect existence of possibility of homicidal death of deceased. Here in this case, except for the imagination of the petitioner which is also not supported by his own supplementary statement given to the police, no direction can be issued to the police to carry out further investigation from the angle of murder of the deceased.

18. In our considered view, this is not a fit case wherein the inherent powers under Article 226 of the Constitution of India or

Section 482 of the Code of Criminal Procedure could be invoked. On prima facie consideration of material on record, we are satisfied that the crime in question is properly investigated. Hence petition must fail being devoid of substance. Accordingly, petition stands dismissed.

**( R. M. JOSHI)**  
**Judge**

**( SMT. ANUJA PRABHUDESSAI)**  
**Judge**

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