

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

**CRIMINAL WRIT PETITION NO. 1363 OF 2015
WITH
CRIMINAL APPLICATION NO. 1179 OF 2023**

Ramrao Damodhar Kanthali

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

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Mr. Tushar Shinde, Advocate h/f Mr. C.K. Shinde, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents

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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ
RESERVED ON : 26th JULY, 2023
PRONOUNCED ON : 01st AUGUST, 2023**

ORDER (PER : R.G. AVACHAT, J.) :

1. This petition, under Article 226 of the Constitution of India, is filed for issuance of a writ of *habeas corpus*, for production of daughter of the petitioner herein. Direction is also sought for investigation to be made by a high-ranking officer. In addition to these prayers, a claim for compensation of Rs.10 lakhs is also made for violation of the petitioner's fundamental right to fair investigation.

2. Heard. The facts of the case in narrow compass are as follows :-

Smt. Pushpabai (since missing) was a married daughter of the petitioner. She had married one Dnyaneshwar Ithape of village Lohgaon, Tq.

Paithan, Dist. Aurangabad, way back in 1989. The couple do not have issue/child. Dnyaneshwar, therefore, contracted second marriage with one Jaya. He has two sons of his second marriage. Pushpabai, Dnyaneshwar and Jaya would stay together. There used to be frequent quarrels amongst the family members for one or the other reason. Dnyaneshwar had transferred 2 Hectors 83 R land in Gut No. 87 to Pushpabai, necessarily for her maintenance. Pushpabai used to supervise agricultural operations of the said field.

3. Dnyaneshwar had been to the house of the petitioner on 07th August, 2014 in the early morning to inform that Pushpabai went missing since the previous evening. The petitioner, therefore, contacted his relations and friends to locate Pushpabai. He also visited very many places in search for his daughter, but in vein. Believing him (Dnyaneshwar) to be true, the petitioner lodged a missing person's report on 11th August, 2014 with Bidkin Police Station, Dist. Aurangabad.

4. According to the petitioner, Dnyaneshwar and his family members viz. Jaya, neither did lodge any report with police nor made any efforts for search for Pushpabai. The petitioner, therefore, suspected something amiss. He, therefore, lodged the F.I.R. against Dnyaneshwar, Jaya and her brother. The concerned police station officer did not make search for Pushpabai, nor investigation of the crime was made properly. A farce was made to record

statements of some of the persons, few of whom later on told to have not given any such statement to the enquiry officer. The petitioner had filed a *habeas corpus* petition (1187 of 2014). The police authorities made him to withdraw the same. Investigation was transferred from one officer to the other and even to C.I.D. Police officer Mr. Kendre, who was doing investigation properly, was shifted midway. Till date, the petitioner's daughter has not been produced, alive or dead. Such failure is only on account of laxity in taking steps to do proper enquiry/investigation. The same has violated the petitioner's fundamental right to fair enquiry/investigation.

5. Learned counsel for the petitioner made submissions reiterating the aforesaid facts and ultimately urged for grant of compensation of Rs.10 lakhs. He relied on the judgment of Division Bench of this Court in case of ***Kamalbai Gangadhar (Patil) Biradar Vs. State of Maharashtra and Others***, 2021 All M.R. (Cri.) 4676.

6. Learned A.P.P. would, on the other hand, took us through four affidavits-in-reply filed by the concerned police officers to submit all out efforts were made for search of missing person – Pushpabai. According to him, Pushpabai was a religious person. She was learned to have left for Pandharpur. She did not return. Dnyaneshwar, Jaya and her brother were

not found to have committed any crime against Pushpabai. He would further submit that efforts are still on in search for Pushpabai. Once she is found, she would be produced before this Court in no time. According to learned A.P.P., it is not a case of custodial death or torture. There is no violation of any right much less fundamental of the petitioner. He, therefore, urged for rejection of prayer for compensation.

7. Considered the submissions advanced. Perused the petition and statements recorded during enquiry/investigation. Also gone through the affidavits-in-reply filed on behalf of the respondents concerned.

8. Facts of the case in Kamalbai Biradar (supra) were altogether different. The petitioner therein has been awarded a sum of Rs.50,000/- towards exemplary cost. On the facts and circumstances of the said case, the Court found the State had failed to take effective steps to secure presence of the petitioner's husband.

9. In the present case, petitioner's daughter – Pushpabai married Dnyaneshwar way back in 1989. The couple did not have issue/child. Dnyaneshwar, therefore, contracted second marriage with Jaya, with consent of Pushpabai. The couple is blessed with two children. Dnyaneshwar and both of his wives were residing together. To allay apprehension of being

insecured, Dnyaneshwar even transferred 2 Hectors 83 R land to Pushpabai. All of a sudden Pushpabai left her matrimonial home in the evening of 08th August, 2014 for no return. It was only on the following morning Dnyaneshwar reported the same to Pushpabai's father, the petitioner herein. The petitioner immediately lodged a missing person's report with Bidkin Police Station. He even filed a *habeas corpus* petition, 1197 of 2014. He withdrew the same on 19th December, 2014. According to the petitioner, since Dnyaneshwar neither lodged police report nor made any efforts for search for Pushpabai, he (petitioner) suspected Dnyaneshwar and his wife – Jaya to have killed her (Pushpabai). Even a crime for offence punishable under Section 302 read with Section 34 of the Indian Penal Code was registered against both of them and brother of Jaya. The facts indicate that Jaya's brother committed suicide. His widow lodged a F.I.R. alleging the petitioner herein to have abetted his suicide by lodging a false F.I.R. against him. It is true that this Court has quashed the F.I.R. and consequential proceeding arising therefrom.

10. We have perused the affidavits-in-reply. It is evident therefrom that no sooner a missing person's report was lodged, enquiry/investigation commenced. Statements of persons acquainted with the facts and circumstances of the case were recorded. One of them claimed to have had seen Pushpabai proceeding in an auto-rickshaw. Another one claimed that

Pushpabai had asked him to give her a lift/drop upon some place as she wanted to visit Pandharpur. All the police stations were informed about missing of Pushpabai. Her photographs were affixed/circulated at various public places and even in newspaper as well. Call data record of her cell phone was obtained. Based on suspicion expressed by the petitioner, a crime was registered against Dnyaneshwar, his second wife – Jaya and her brother. A sniffer dog was taken to their residence to find whether Pushpabai was killed and buried there or around. There was however, no headway. According to the respondent – police authorities, ‘A’ summary report was, therefore, filed. It was accepted by the learned Magistrate. The petitioner challenged the same in revision unsuccessfully. The order passed in revision is challenged in a writ petition filed in this Court.

11. The affidavits-in-reply and statements of the persons acquainted with the facts and circumstances of the case lead us to observe that the police authorities did take efforts and made enquiry / investigation into a missing person’s report and even registered a crime against Dnyaneshwar and others. Unfortunately, the enquiry/investigation did not yield result. In our view, no violation of alleged fundamental right of the petitioner to have fair investigation into the report/s lodged by him has occurred in this case. The State or its authorities cannot, therefore, be directed to pay the petitioner either compensation or exemplary cost. We, therefore, turn down petitioner’s said prayer.

12. The petition is very old. We hereby dispose it of with a direction to the respondents – police authorities to continue with the enquiry / investigation into a missing person's report / the crime registered based on the report lodged by the petitioner herein. Criminal application thus stands disposed of.

SSD (SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)