

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.6439 OF 2021

Sou Nisha Vasant Vibhute@ Yelapale
Age 35 years, Occ: Police.
R/o Madgule, Tal-Atpadi, Dist.Sangli
Atpadi-400 416.

... **Petitioner.**

Versus

1. The State of Maharashtra
Through the Secretary of Home
Department, Mantralaya, Mumbai.

2. The Inspector General of Police
Maharashtra State, Mumbai.

3. The Superintendent of Police,
Solapur District, having office
at Solapur S.P.Office, Solapur

4. The Superintendent of CID
having office at Shivajinagar,
Pune, Dist-Pune.

5. The Senior Police Inspector of
Sangola Police Station, Sangola,
Dist-Solapur.

6. The Police Sub-Inspector (I.O.)
of C.R.No.277 of 2020 of Sangola
Police Station, Sangola, Dist-Solapur

... **Respondents.**

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Mr Laxman Kalel, Advocate for the Petitioner.

Smt P. P. Shinde, APP for the Respondent-State.

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**CORAM: NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 24 JANUARY 2023.

P.C. :-

. Deceased Dipali was blessed with three children, of which the Petitioner and other daughters are in the police services whereas the son is working in the State of Assam.

2. Since Dipali was residing alone, she died on 18.2.2020, resulting into registration of offence being Crime No.247 of 2020, punishable u/s 302, 342, 201 of the Indian Penal Code. In the investigation of the aforesaid crime, the cause of death reflected in the Post Mortem Report is *'Asphyxia due to smothering and strangulation'*.

3. The Petitioner, a Police Constable and the daughter of the

deceased Dipali, has come out with a prayer in the petition for addition of Sections 378, 380, 396 of the Indian Penal Code, in FIR No.247 of 2020, with request to transfer the investigation in the aforesaid FIR, to Central Bureau of Investigation or Crime Investigation Department, as according to her, neither the role of suspects namely Sitaram, Dilip and Bajrang is investigated nor recovery was made from the arrested accused namely Vijay Gurav. Drawing support from the Judgment of the Apex Court, in the matter of *Himanshu Kumar and Others Vs. State of Chhatisgarh & Ors.*¹, the learned Counsel for the Petitioner would urge that, perusal of complaint, nature of investigation carried out apparently discloses failure of Respondent to carry out investigation diligently. According to him, cash of Rs.1,50,000/- so also, jewellery from the body of the deceased Dipali was not recovered, particularly, when no efforts to that effect are made by the investigating agency. According to him, the neighbors namely Lata and Surekha, both, have specifically mentioned about visit of suspects namely Sitaram, Dilip and Bajrang immediately before commission of offence i.e.

1 2022 LiveLaw (SC)598.

murder of the deceased Dipali, as such, said angle is not investigated.

4. Learned APP, from the investigation papers would support investigation carried out till this date. Our attention is invited to the statements of Lata, so also, Surekha, suspects Sitaram, Dilip and Bajrang. It is further claimed that the complaints made by the petitioner was duly re-looked into and accordingly Accused Vijay Gurav came to be charge sheeted. Learned APP would urge that even if, during the course of argument, theory of criminal conspiracy for attracting Section 120-B of the IPC is sought to be espoused, no material to that effect was discovered during the investigation to infer that suspects Bajrang, Sitaram and Dilip were hand in gloves with Vijay, in the commission of offence. As such, the learned APP prayed for dismissal of the petition.

5. Considered the rival submissions.

6. Perusal of the statements of witnesses namely Surekha and Lata who are neighbors and are residing adjacent to the deceased Dipali, in categorical terms speaks of the aforesaid three persons namely Sitaram, Dilip and Bajrang, not as suspects in the crime but are visitors to the deceased Dipali, as she was staying alone. Overall investigation, particularly the statement, recorded u/s 161 of the Cr.P.C. speaks of the deceased Dipali hiring services of accused Vijay, in the matter of cultivation of agricultural land. It is, in this background, Vijay, regularly was in continuous company of the deceased Dipali who has alleged to have committed the offence in question. Though, the investigation papers speaks of character assassination of Dipali, however, this Court feel it appropriate not to comment on same.

7. Apart from above, what can be noticed is, even if, son of the deceased namely Ramhari was in enmical terms with Amit Vibhute, however, it appears that the said issue i.e. offence u/s 326 of the IPC was already compromised. Even otherwise, it is not the

case of the petitioner that Amit is one of the suspect in the matter.

8. If we appreciate the submissions of the petitioner, which are based on the theory of criminal conspiracy, the petitioner, *prima facie*, is unable to demonstrate that Accused Vijay was in company of three suspects namely Dilip, Sitaram and Bajrang, in the matter of hatching criminal conspiracy to cause murder of the deceased Dipali. The investigation papers reveals detail investigation carried out by the investigating agency and this Court expressed satisfaction over the investigation carried out till this date.

9. In view of the above, no case is made out to transfer the case to the Central Bureau of Investigation or Crime Investigation Department or direct investigating agency to add sections, under which offence can be made out.

10. The petition as such, fails, however, it is clarified that dismissal will not come in way of petitioner if she want to move for assistance in trial.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

