



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 520 OF 2022

Smt. Alka Sundarlal Bhosale

Age : 45 years, Occupation: Labour,

Residing at : Hingani, Taluka- Kopargaon,

District- Ahmednagar

...Petitioner.

V/s.

1. The State of Maharashtra
through its Department of Home,
Mantralaya, Mumbai
2. Inspector General of Prison
C/o Dy Inspector General of Prisons (HQ),
2nd Floor, Old Central Building, Pune-1
State of Maharashtra
3. Deputy Inspector General of Prison
& Correctional Services Central Region,
Aurangabad
4. Superintendent of Prison
Nashik Central Jail, Nashik Road
Nashik, District – Nashik
5. Deputy Superintendent of Prison
Nashik Central Jail, Nashik Road,
Nashik, District- Nashik
6. Jailor of Prison,
Nashik Central Jail, Nashik Road,
Nashik, District- Nashik
7. Sub-Divisional Officer,
Yeola, Sub-Division Yeola,
Yeola- Kopargaon Road,
Taluka – Yeola, District Nashik

8. The Collector, Nashik
Collector Office,
At Nashik
9. Sub-Divisional Police Officer
Shirdi Division, At – Shirdi
10. Police Inspector, Kopargaon
Taluka – Kopargaon, District -
Ahmednagar

...Respondents.

Mr. Ajit Hon for the Petitioner.

Ms. M.H. Mhatre, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

Reserved on : 17th October, 2023.

Pronounced on : 2nd November, 2023.

JUDGMENT : (Per SHARMILA U. DESHMUKH, J.)

1. By this Petition filed under Article 226 and 227 of the Constitution of India, the Petitioner – the wife of the deceased, seeks an inquiry into the death of her husband-Sundarlal Rohidas Bhosale, who was an under-trial prisoner at Nashik Central Prison, Nashik Road, Nashik. Pursuant to an order permitting amendment, additional prayer has been added for quashing and setting aside the report dated 30th June, 2021 submitted under Section 176 (1-A) of Cr.P.C. and for direction to conduct fresh inquiry in respect of the death of the deceased.

2. The facts of the case are that, the deceased-Sundarlal was

arrested in CR No.I-107/2018 registered with Kopergaon Police Station, District Ahmednagar for the offences under Sections 395, 396, 397, 120-B, 412 and 414 of the Indian Penal Code, 1860 and under the Arms Act. The deceased was remanded to police custody till 19th September, 2018 and thereafter to judicial custody and was lodged in Nashik Central Prison at Nashik Road. Subsequently, the provisions of the Maharashtra Control of Organised Crime Act, 1999 were invoked against the deceased. Whilst in judicial custody, the Petitioner expired on 30th August, 2020.

3. Heard Mr. Ajit Hon, learned Advocate for the Petitioner and Ms. M.H. Mhatre, learned APP for the Respondent-State.

4. Mr. Hon, learned Advocate for the Petitioner submits that, when the Petitioner used to visit the victim at Nashik Central Prison, Nashik, the deceased had complained that, he was not feeling well and that no adequate medical treatment was given to him. He would further submit that, no intimation was received by the Petitioner or the family members as regards the ill-health of the deceased, nor any details as regards the medical treatment were made available to the Petitioner and suddenly, the Petitioner alongwith her mother was called upon at Dhule to take the dead-body of the victim. He would further submit that, the Petitioner and the family members were not ready to take the dead-body

of the deceased and sought an inquiry. However, the thumb impression of the Petitioner's mother-in-law was forcefully obtained on the receipt and the dead-body was handed over. He would submit that, the death of the deceased has been caused due to negligence and failure to make available the appropriate medical treatment to the deceased. He would further submit that, no appropriate inquiry under Section 176 (1-A) of Cr.P.C. was conducted in respect of the death of the deceased. According to him, the death of the Petitioner's husband has occurred whilst in the custody of the Respondent-State and as such, the Respondent-State is liable to pay compensation for the death of the deceased.

5. Ms. Mhatre, learned APP has pointed out the Affidavit dated 26th September, 2023 filed by Mr.Umaji T. Pawar, Deputy Inspector General of Prisons and Correctional Services, Central Region, Aurangabad. It is stated therein that, on 15th January, 2019, 21st January, 2019 and 29th January, 2019, the deceased–Sundarlal was given medical treatment for Dysnea i.e. difficulty in breathing, cold and for weakness. That the Medical Officer had conducted the blood checkup of the deceased on 15th February, 2019 and was given treatment as and when required. That on 30th August, 2020, upon the complaint of the deceased as regards chest pain, the deceased was examined by the Medical Officer and was urgently transferred to the Civil Hospital on the same day at

6:30 a.m. On 30th August, 2020 at about 10:35 a.m., the deceased died while under medical treatment at the Civil Hospital.

6. Learned APP would submit that, the Magisterial inquiry under Section 176 (1-A) of Cr.P.C. was duly conducted and the inquest panchanama, postmortem report and video shooting of the postmortem was placed before the Executive Magistrate. She points out the report of the magisterial inquiry conducted under Section 176 (1-A) of Cr.P.C., which records that, the notice about the magisterial inquiry was sent to the Petitioner to remain present on 29th October, 2020 and 2nd November, 2020. She would further point out the postmortem report showing the cause of death as “cerebral edema with pulmonary edema”. She would submit that, there is no allegation of torture by the Petitioner and that due to his ill-health the Petitioner’s husband has expired.

7. We have considered the submissions and perused the records. The issue before us is whether the death of the deceased was caused for want of proper medical care and treatment. Annexed to the affidavit-in-reply of the Respondent-State are the medical records which discloses that on atleast 12-13 occasions, the deceased was treated at the Civil Hospital, Nashik for various ailments. The concise statement can be found at page No.54 of the Petition, which has been given by the Chief Medical Officer, Nashik Road Central Prison. The deceased has expired

while he was undergoing medical treatment at Civil Hospital at Nashik. There is no allegation of ill-treatment at the hands of Jail Authorities. Perusal of the postmortem report would indicate the cause of the death as “cerebral edema with pulmonary edema”. The postmortem report does not reveal any internal or external injuries. There is no reason to doubt the medical report. The Magisterial inquiry has been duly conducted as contemplated under Section 176 (1-A) of the Code of Criminal Procedure.

8. Perusal of the inquiry report indicates that, during the inquiry, necessary documents were called for from the Superintendent of Nashik Central Prison, and the Civil Surgeon, Civil Hospital, Nashik. The postmortem report was also examined.

9. The following statements were recorded by the Sub-Divisional Magistrate, while conducting the inquiry, as follows:

Sr. No.	Name of the witness	Particulars of witness	Relevance of statement
1	Mr.Toseef Shakil Shaikh	(Under-trial inmate with the deceased)	Statement does not disclose the case of ill-treatment to the deceased-prisoner.
2	Mr. Chetan Dilip Dumbre	(Under-trial inmate with the deceased)	Statement does not disclose the case of ill-treatment to the deceased-prisoner.
3	Shri Pradeep Rajendra Bhure	Constable at Nashik Road Central Prison, Nashik	He had taken the deceased for treatment in Civil Hospital.
4	Dr. Shri Nilkanth	Doctor, Central	He had given treatment at the

Sr. No.	Name of the witness	Particulars of witness	Relevance of statement
	Ramrao Sasane;	Prison Hospital Nashik	time when the deceased complained of chest pain.
5	Dr. Sunita Aman Tadvi,	On Duty Medical Officer at Civil Hospital, Nashik,	Was on duty at the relevant time; declared the deceased dead.

10. As regards the contention that, the Petitioner who was the wife of the deceased was not called upon to participate in the inquiry, the report indicates that, not only a public notice was published for inviting objection regarding the death of the deceased but a notice was issued to the relatives of the deceased to remain present and as per the office record, the Petitioner remained present on 29th October, 2020 and 2nd November, 2020 and submitted her say making allegation against the jail authority which has been denied in writing by the Superintendent and Jailor, Central Jail, Nashik. The postmortem report does not indicate that, there was any torture which has resulted in the death of the deceased. The cause of the death is “cerebral edema with pulmonary edema”. There is no material produced on record to demonstrate that, the death has been caused due to negligence on part of the jail authority to provide timely medical aid to the deceased. On the contrary, the record indicates that, on several occasions the deceased was provided with timely medical aid as he complained of ill-health.

11. Having regard to the above, we do not find any reason to disbelieve the magisterial inquiry report conducted under Section 176 (1-A) of Cr.P.C. or that the death of the deceased was not a natural death. The documents on record indicates that, timely medical aid was made available to the deceased and there is no negligence on part of the jail authority and as such, there is no question of grant of any compensation as we do not find any negligence or failure on part of the Respondents in performing their duties. Similarly, the procedure contemplated under Section 176 (1-A) of the Cr.P.C. has been duly followed with an appropriate opportunity to the Petitioner to participate in the inquiry, which opportunity she has availed and after recording the statements of all concerned, the conclusion which has been arrived at by the Sub-Divisional Magistrate, reads as under:

“After going through the above discussion, the deceased prisoner Sundarlal Rohidas Bhosale, Age-44 years, At-Hingne Tal. Kopargaon, Dist.Ahamadnagar. died on 30/08/2020. There was no complaint of ill treatment or negligence in providing medical aid to the deceased prisoner. He died due to “Cerebral edema with pulmonary edema” as per final Post-mortem certificate. It was a natural death. There was no specific complaint received regarding the death of the deceased prisoner.”

After perusing entire record, we find no reason to disbelieve

the conclusion which has arrived at in the magisterial inquiry.

12. The Petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)