

ANANT
KRISHNA
NAIK

Digitally signed
by ANANT
KRISHNA NAIK
Date:
2023.11.10
12:59:11
+0530

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

WRIT PETITION NO. 3350 OF 2023

Bhagyashree Mote

... Petitioner

Vs

State of Maharashtra & Ors.

... Respondents

Ms Minal Chandnani a/w. Adv. Zoheb Merchant i/b. J. S. Chandnani for the Petitioner.

Ms. S. S. Kaushik, APP for the Respondent-State
Jitendra Girnar, PSI, Wakad Police Station. present.

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

DATED : 6th NOVEMBER, 2023

P.C.:

1. Madhu, a widow of Sanket Markande, was the sister of the present Petitioner. Sanket Markande died on 18/02/2023, whereas Madhu died on 12/03/2023. The couple was blessed with two issues, son - Soham and daughter - Sahibai.

2. From the material available on record, it is apparent that the deceased - Madhu was in the business of cake making and also a trainer. Madhu expired on 12/03/2023. In this background, the father of the deceased - Madhu and present Petitioner lodged two complaints on 15/05/2023 and 15/07/2023.

3. In the aforesaid complaints, it is claimed that the deceased Madhu was subjected to cruelty at the hands of Damodar Subhash

Maratkar, Mangesh, son of Subhash Maratkar and Dada Subhash Maratkar and they were not permitting the deceased - Madhu to succeed to the estate of the deceased - Sanket i.e. her husband.

4. In addition to above, it is claimed that deceased - Madhu was not suffering from any ailments, however, having seen her body, it was noticed that same was having substantial injury marks on her face, which speaks of she being attacked before her death.

5. As such, it is claimed that the investigation which is carried out by the Respondents is biased and same needs to be transferred to either State CID or CBI. So as to substantiate the aforesaid prayer, following grounds were sought to be relied on:

- (a) deceased - Madhu died of homicidal death;
- (b) her body was having injuries and;
- (c) there was enmity between the deceased - Madhu and the persons named in the aforesaid complaints.

6. In addition to above, it is also claimed that one Archana was accompanying deceased - Madhu at the time of her death and as such a suspicion is sought to be pointed out towards Archana, who instead of intimating the relatives of deceased-Madhu, called her own relatives so as to shift Madhu to various hospitals.

7. In the aforesaid background the contentions are not only bias and malafide investigation is carried out but the investigating officer has also not looked into the very issues, which are canvassed hereinabove.

8. In the aforesaid background, we have directed learned APP to produce the investigation papers. With the assistance of Ms. Kaushik, learned APP, we have perused the entire investigation papers.

9. After the papers were perused, we expressed our satisfaction about the investigation carried out till this date. Learned Counsel for the Petitioner, therefore sought time to take instructions as to whether the Petitioner intends to withdraw the Petition or would like to invite the order. This is how the matter was adjourned on 30/10/2023 and 02/11/2023. Today when the matter is called out, learned Counsel for the Petitioner submits that the Court may pass appropriate order in the matter.

10. The Apex Court in the matter of ***Royden Harold Buthello & Anr. vs. State of Chhattisgarh & Ors*** reported in **2023 LiveLaw (SC) 154** has held that the power to transfer the investigation in exercise of extraordinary jurisdiction needs to be ordered sparingly and in an exceptional circumstance. The Court while doing so is required to appreciate the facts and circumstances and need to

record a conclusion as to the satisfaction of making out a case for transfer as no other option of securing a fair trial without the investigation by specialized investigating agency can be achieved.

11. Such powers are exercised so as to provide credibility and instil confidence in the investigations or incidents of national and international ramifications. The Court is equally required to be sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only in case of reasonable apprehension about the justice becoming a victim because of shabby, partisan and malafide investigation wherein the Courts needs to be stepped in in exercise of extraordinary powers.

12. The Apex Court in the matter of ***Arnab Ranjan Goswami vs. Union of India*** reported in **(2020) 14 SCC 12** has observed thus:

“52. In assessing the contention for the transfer of the investigation to CBI, we have factored into the decision-making calculus the averments on the record and submissions urged on behalf of the petitioner. We are unable to find any reason that warrants a transfer of the investigation to CBI. In holding thus, we have applied the tests spelt out in the consistent line of precedent of this Court. They have not been fulfilled. An individual under investigation has a legitimate expectation of a fair process which accords with law. The displeasure of an accused person about the manner in which the investigation proceeds or an unsubstantiated allegation (as in the present case) of a conflict of interest against the police conducting the investigation must not derail the legitimate course of law and warrant the invocation of the extraordinary power of this Court

to transfer an investigation to CBI. Courts assume the extraordinary jurisdiction to transfer an investigation in exceptional situations to ensure that the sanctity of the administration of criminal justice is preserved. While no inflexible guidelines are laid down, the notion that such a transfer is an “extraordinary power” to be used “sparingly” and “in exceptional circumstances” comports with the idea that routine transfers would belie not just public confidence in the normal course of law but also render meaningless the extraordinary situations that warrant the exercise of the power to transfer the investigation. Having balanced and considered the material on record as well as the averments of and submissions urged by the petitioner, we find that no case of the nature which falls within the ambit of the tests enunciated in the precedents of this Court has been established for the transfer of the investigation.”

13. Apart from above, the investigating agency cannot be burdened with the investigation of the defence case as the investigator is required to appreciate the case of the prosecution from all angles for achieving the very target of fair and speedy investigation in the matter. Merely because the investigation of the investigator is not appealing to the party that by itself cannot lead to faulting the investigation by the investigating officer as such the investigation is contrary to the defence version.

14. In the light of the aforesaid law laid down by the Apex Court, we need to appreciate the case of the Petitioner so as to find out whether the investigation is bias and targeted one so as to absolve the true accused.

15. This Court is vested with the power of transferring

investigation from one agency to another provided the facts, the circumstances and approach of the investigating officer demands so. While ordering the transfer of the investigation, this Court is required to record the reasons for forming an opinion for ordering transfer. In case if the charge-sheet is submitted the Court generally is not suppose to exercise the powers of transfer by entrusting the same to another specialized agency. In support of the aforesaid observations, reliance can be placed on the judgment of the Apex Court in the matter of ***Vinay Tyagi vs. Irshad Ali alias Deepak and others*** reported in **(2013) 5 SCC 762**.

16. In the aforesaid background, we are required to look into the facts and investigation papers.

17. Deceased Madhu on the day of her death accompanied Archana Dede so as to locate rented premises for operating their cake making business and training center. Accordingly, both of them had been to the premises of Sarita Singh where deceased Madhu collapsed. The witness Archana who was knowing deceased Madhu since December, 2022 visited residence of Sarita with Madhu, as Sarita's premises were available on rent. Suddenly Madhu collapsed at the said premises on the ground, at which point of time she was offered water. However, there was no response. As a sequel, Archana

alongwith the owner of the premises viz. Sarita Singh, removed Madhu to Bharati Hospital in auto-rickshaw. When they reached Bharati Hospital, body of deceased Madhu was informed to have been removed from auto-rickshaw and shifted on stretcher as the doctors who have examined her suggested that she be shifted to YCM Hospital. As the ambulance was not available, again body was shifted from stretcher to another auto-rickshaw and was taken to YCM Hospital. It is further informed by said Archana that since she was also disturbed because of the sudden incident, she called her brother-in-law Rame. In the intervening period on the mobile phone of deceased, call of one Gauri was received to whom Archana informed about deteriorated health of deceased Madhu. After deceased Madhu was removed to YCM Hospital, doctors after examining declared her dead.

18. Vishal who called on mobile phone of deceased Madhu was informed by the hospital people about the incident and by using her thumb, mobile phone of the deceased was opened and accordingly calls were made to her father, who also attended the hospital.

19. Specifically in response to the query of the Investigating Officer, explanation tendered by Archana in her statement about facial injuries suffered by Madhu is, she suffered injuries because

they tried to forcibly open her mouth to make her drink water and thereafter twice she was made to travel in auto-rickshaw.

20. Similar story is also reflected in the statement dated 14/3/2023 of the landlady Sarita Anand Singh. Statements of these two witnesses are recorded during interrogation in question and answer form also. Aforesaid statements are supported by auto-rickshaw driver Mr. Shivaji Hatesingh Patil, Sanjay Janardan Dede, who happened to be the brother-in-law of Archana Dede, Rajesh Thomas, neighbour of the landlady Sarita Singh, Babita Laxman Kale, neighbour of deceased Madhu, Shubhangi Kale, neighbour of deceased Madhu.

21. The statement of Bibhishan Mote, father of deceased Madhu was recorded on 20/03/2023 wherein he has stated that Madhu was suffering from blood pressure problem. He has also stated that person by name Vishal who was having an office adjoining the house of Madhu was on regular visiting terms to her home from her group.

He has further stated that on 12.03.2023, a lady called from mobile of Madhu and informed that she having suffered low blood pressure, was brought to YCM Hospital. He has further stated that Archana gave him the aforesaid information. He has further stated that he has attended the Hospital wherein he has witnessed body of

Madhu and noticed small injuries on her face. He has expressed suspicion about cause of death of Madhu and opined that it was Archana who might have killed Madhu. As such, he requested for investigation.

22. Vanita a trade unionist has stated in her statement about her acquaintance with Madhu. She has also stated that she has suggested Archana to locate premises for imparting training of making cake to self help group of women.

23. Ashwini, mother-in-law of deceased Madhu in her statement has stated about Madhu having illicit relations with Vishal, who has assaulted her sometime back. She has also stated that her son Sanket who has performed love marriage with Madhu was alcoholic and not earning anything. She has stated that her objection to illicit relation of Madhu with Vishal has resulted into differences with Madhu on certain occasions. She has also stated that her son Sanket expired on 18/02/2023 as he suffered psoriasis of liver. She has further stated that Madhu might have been killed by Vishal.

From the aforesaid narrations of the witnesses, it can be noticed that deceased - Madhu was not having good terms with her in-laws as it is claimed that her in-laws have not supported her during the life time of her husband. The properties of the in-laws was

never permitted to be enjoyed by the deceased - Madhu or her husband, which appears to be a cause for strained relationship. Apart from above, deceased-Madhu even if had earlier made complaints against her in-laws there is no material to infer that in-laws are involved in the murder of the Madhu particularly having regard to the cause of death cited in the medical papers.

24. Damodar Maratkar, brother-in-law of Madhu has stated in his statement about his relationship with deceased Madhu and her husband. He has also stated that Madhu has filed a false case of sexual harassment against him and she was of a quarrelsome nature and used to quarrel with him and his aunt. He has stated that he received information about death of Madhu on call from his brother Mangesh.

25. Vishal Nachpalle, friend of deceased Madhu has stated that he was in love with deceased Madhu and they were having extra-marital affair. He has stated that Sanket, husband of deceased Madhu, was alcoholic and he expired in February 2023. He has further stated that he had regular physical relationship with deceased Madhu at various places, which fact was known to parents of deceased Madhu. He has also stated that at every moment in life, he has helped deceased Madhu so as to enable her to survive and was equally

caring for her daughter also. According to him, he was aware that Madhu was not keeping good health.

26. During investigation, Madhu's phone was sent to forensic analysis which reflects about her ill-health and her interaction with Vishal.

27. Postmortem report in categorical terms speaks that Madhu was aged about 32 years and blood was not oozing from her mouth, nostrils and vagina. However, dried blood stains were present in her right ear. It further states that she suffered following external injuries:-

"1) Contused abrasion present over right pinna on anterior aspect of size 1 cm x 1cm, red.

2) Multiple cricentric abrasion present over face on both maxillary area on lower aspect of size varying from 1 cm X 0.5cm to 0.5cm to 0.5cm, red.

3) Multiple linear abrasion present over upper and lower lip of size varying from 1 cm to 0.5cm red."

28. Postmortem report also speaks of she having suffered ante mortem fresh injuries. In respect of internal examination of Brain, Heart, Thorax, Kidney, following observations are made in the Postmortem report:

Internal Examination
Brain- the appearance of its
Meninges - congested

coverings, size weight and general condition of the organ itself and any abnormality found in its examination to be carefully noted	Brain-1200gms. congested, edematous. patechial hemorrhages present at places.
Heart with weight	Congested, Contains blood and blood clots. In right coronary artery about 20-30% block present and on left side 40-50% block present, present. Both coronaries are hardned and calcified.
Thorax:- a) Walls, ribs cartilage b) Pleura c) Larynx, Trachea and bronchi d) Right lung e) Left lung f) Penccardium Kidney (with weight)	No injury, intact. Congested. congested, No foreign body, hyoid bone and thyroid cartilage intact. Both Lungs congested, oedematous. Patechial hemorrhages present all over lung surface at places. Consolidation present in all lobes, on dissection red to grey hepatisation present. congested. Both kidneys congested, 100 gms each, patechial hemorrhage present.

29. Since the Forensic Science Laboratory report was awaited, a

final reason of cause of death was not mentioned. The Investigating Officer while investigating accidental death No.38 of 2023 has sought opinion of doctors on certain issues. Doctors gave detail opinion on 25.03.2023 along with positive findings and impression which read as under:

"Positive findings:

1. Brain - Changes of Meningoencephalitis.
2. Heart - Changes of myocardial hypoxia with mild left ventricular hypertrophy.
3. Lung - Marked congestion with pulmonary edema, with interstitial pneumonitis.
4. Kidney - Changes of cloudy degeneration.
5. Liver - Changes of chronic liver parenchymal disease.
6. Spleen - Congestion.

Impression - Changes of meningoencephalitis with myocardial hypoxia with mild left ventricular hypertrophy with chronic liver parenchymal disease with marked congestion with pulmonary edema, with interstitial pneumonitis and congested spleen."

Investigating Officer was informed by the Medical Officer of YCM Hosptial vide letter dated 14/6/2023 that cause of death is "Coronary artery disease associated with cardiac hypertrophy".

30. It appears that father of the Petitioner and deceased Madhu on 19.06.2023 gave a statement to the police authority that they were informed about cause of death of their daughter Madhu and as such they were satisfied about cause of death viz heart ailment. As such, he has sought return of mobile of deceased Madhu which was sent

for analysis.

31. The entire investigation papers in the aforesaid accidental death case in categorical terms pin points that Investigating Officer has carried out detail investigation and has also looked into possibility of involvement of suspects in the offence viz Archana and Vishal etc. The investigation supported by cause of death referred above, cannot lead us to a conclusion that Madhu died homicidal death. Facial minor injuries suffered by deceased Madhu were because of her sudden fall on the ground, thereafter she was forcibly tried to administer water, her twice shifting to hospital in auto-rickshaw when she was unconscious and then pulling her body on stretcher sufficiently speaks of causes of facial injuries. As such, nothing malafide or bias could be noticed on the part of Investigating Officer so as to curtail or misdirect investigation in the matter. Petitioner before us is a sister of deceased Madhu and on earlier occasion she had never lodged any protest in relation to suspected death of Madhu. As such, based on aforesaid detail investigation, we are satisfied that neither any malafide is established nor any arbitrary investigation is carried out by the Investigating Officer. That being so, no case for grant of relief of transfer of investigation to CID or CBI is made out.

32. The Petition as such fails and same stands dismissed.

(N. R. BORKAR, J)

(NITIN W. SAMBRE, J.)