

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 327/2022 .

Ankit s/o Radheshyam Biranwar,
Aged about 22 years, Occupation
Student, resident of Near Radha
Krishna Mandir, Main Road,
Goregaon, District Gondia.

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PETITIONER.

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Ram Nagar,
Gondia.

...

RESPONDENT.

Mr. Y.G. Nayyar, Advocate for the Petitioner.
Shri A.M. Kadukar, A.P.P. for the Respondent/State.

CORAM : VINAY JOSHI AND
BHARAT P. DESHPANDE, JJ.

DATE : APRIL 03, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Considering the controversy involved in the matter and by consent of the learned Counsel appearing for the parties, Criminal Writ Petition is taken up for final disposal at the stage of admission by issuing **Rule**, making the same returnable forthwith.

2. The petitioner is an accused in First Information Report bearing Crime No.399/2019 registered with Ram Nagar Police Station, District Gondia for the offence punishable under Sections 302, 201, 364-A and 120-B of the Indian Penal Code. He has filed this petition under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, seeking various reliefs in the nature of issuance of a writ of prohibition, directing trial Court, not to proceed with the concerned criminal case namely Sessions Trial No.71/2020. The petitioner also seeks writ of mandamus thereby directing the respondent police authorities to re-investigate the offence, and also prayed for his release on bail.

3. Police Sub-inspector - Amol Sonwane lodged a report on

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17.12.2019, on the basis of which the aforesaid crime has been registered. The prosecution case in brief is that, a missing report has been filed with the concerned police reporting that a young boy aged 20 years namely Saurabh Katare, went missing from his house. On 15.12.2019 around 2 p.m., Saurabh received a phone call on which he left the house by riding a two wheeler. Saurabh did not return till the late evening. The family members have searched for Saurabh, however, they could not find him, therefore uncle of Saurabh namely Komal Katare, has filed a missing report, which was registered vide No.42/2019.

4. During the course of investigation, the police have obtained call details of Saurabh's cell number. It was transpired that the last four calls on the cell phone of Saurabh were received from cell No.7030240945. The said Cell number was whatsapp number of the petitioner Ankit. Accordingly the police have verified the call details of the cell number of the petitioner Ankit. It was transpired that at relevant period other three co- accused were in constant touch with him, and therefore, the needle of suspicion went against the petitioner Ankit and his three friends.

5. During enquiry the petitioner Ankit has disclosed that he has hatched a conspiracy to abduct Saurabh for ransom of Rs.30 lakhs. In accordance with their plan, on 15.12.2019 around 2 p.m. they called Saurabh on his mobile, near MIET College Gondia. Accordingly, Saurabh went to the place by his two wheeler. Already petitioner's three friends had arrived at said place by a four wheeler bearing registration No.MH 49-AT-0988. No sooner Saurabh came to the spot, all of them caught hold and forcibly made him to sit in the car. Co-accused Raju assaulted Saurabh at his face by beer bottle. They made Saurabh to lay at foot place of the car. Thereafter three companions of petitioner Ankit along with Saurabh went ahead by car. Petitioner Ankit followed them by two wheeler. They took Saurabh at longer place, but, the condition of Saurabh became worse. Therefore they decided not to go for ransom, but, to eliminate Saurabh.

6. The car was made to stop near a small bridge of village Mudhapar. All of them have tied sellotape around the face of Saurabh, as well as his legs were tied by sellotape. Saurabh was

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throttled in the car. They got assured that Saurabh is dead. Petitioner asked his companions to throw the dead body into the river. It was revealed that the co-accused acted at the instance of petitioner, took dead body near Bagh River, tied a big stone by scarf and threw the dead body into the river.

7. On the basis of said information, the police have registered Crime No.399/2019 and carried investigation. During the course of investigation, statement of relevant witnesses came to be recorded. At the instance of accused, memorandum Panchnama was drawn and articles have been seized. Panchnama of the scene of offence was drawn. Clothes of deceased, as well as, accused were seized. Autopsy was conducted on the dead body. Call details and Tower location of the cell-phone used by accused have been procured. After completion of investigation, the police have filed charge-sheet in the Court of concerned Magistrate.

8. The trial Court has framed charges and evidence of prosecution witnesses has commenced. The prosecution has examined first witness P.W.1 -Komal Katare on 21.02.2022. As such

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the prosecution has examined four witnesses upto 25.04.2022. It is informed that thereafter there is no progress in the trial. At this stage this petition has been filed by accused no.1 Ankit for the reliefs, as stated above.

9. We have extensively heard the submissions canvassed by the learned Counsel for the petitioner and learned A.P.P. in response. We have also gone through the written notes of arguments submitted by the petitioner highlighting the submissions on the following aspect :-

- [a] Article 21 of the Constitution of India which entails right of fair investigation and fair trial.
- [b] Life and liberty.
- [c] Locus for re-investigation.
- [d] Duty of Investigating Officer.
- [e] Investigator's Bias.
- [f] Investigation.
- [g] Reasonable Investigation.
- [h] Fair Investigation.
- [i] Callous approach of Investigating Officer.
- [j] Defective Investigation.
- [k] "One of the Most perfunctory investigation.
- [l] Indian Evidence Act, 1872; Section 27.

- [m] Criminal Trial – Circumstantial Evidence – Motive.
- [n] Confessional statement and memorandum of recovery – Section 25 and 27 of Evidence Act.
- [o] Duty of High Court.
- [p] Gross injustice.
- [q] Investigation can go on.
- [r] Section 173[8] Cr.P.C. gives unfettered right to investigating agency for ‘further’ probe, no restrictions exist.

We have also gone through the judgments on which reliance has been placed and perused record and proceedings.

10. The incident is tragic, which took life of a young boy aged 20 years namely Saurabh Katare. He went missing from his house on 15.12.2019, for which his uncle Komal Katare lodged a missing report. During said enquiry, police have investigated into the call details of Saurabh. It transpired that the deceased Saurabh received last four phone calls from the petitioner Ankit. Getting a clue for investigation, the police further probed call detail record [CDR] of both, and apprehended all accused. At the instance of accused, memorandum statements have been recorded followed by recovery of articles. Statement of various witnesses have been

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recorded including the eye witnesses who have seen the accused Ankit and others while taking away the deceased Saurabh by a car. There were in all 8 injuries on the person of the deceased and the cause of death was due to cumulative effects of constrictions of neck structures and head injury. Resultantly the police found enough material to conclude that the accused by hatching a conspiracy, abducted deceased Saurabh for ransom. The deceased was assaulted by means of beer bottle, and as his condition became worse, he was murdered and dead body was thrown in the river. Charge sheet was filed and trial has commenced. Bail applications filed by the petitioner Ankit, came to be rejected and he is in jail.

11. On above background we have examined the contentions raised by the petitioner seeking re-investigation. Undoubtedly when the Court feels that the investigation is partisan or shabby, then the Court may step in and exercise its extra ordinary powers to transfer the investigation or even may direct for re-investigation. There can be no dispute that the accused is entitled to a fair investigation which is a part of fundamental right. In catena of decisions it has been ruled by the Supreme Court that in exceptional circumstances,

the Court in order to prevent miscarriage of justice, if considers necessary, may direct for *de nova* investigation. The decision whether exceptional powers are to be exercised, depends upon the Court's satisfaction based on the circumstances of the case. There is no hard and fast rule or can possibly be prescribed for universal application to all cases . Obviously just because a party seeks for re-investigation or feels that the investigation was not done in accordance with law, directions cannot be issued.

12. The learned Counsel for the petitioner by and large endeavored to point out the deficiencies in the investigation. Rather it was the sole reason for the petitioner to seek re-investigation. It is not the contention of the petitioner that there was other side of the story, which was suppressed by the investigating officer or they tried to shield the real culprits. Submissions are based on the ground that there are various lapses and loopholes, rather deficiencies in the process of investigation.

13. It is submitted that uncle of the deceased has initially lodged a mere missing report, but, the police have suo moto

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registered the first information report. It is argued that when there was mere missing report, how the police has registered A.D.R.No.42/2019, and as to why uncle of the deceased namely Komal has not lodged a police report. Needless to say that anybody can set the criminal law into motion. It is not necessary that Komal should only lodge the first information report. It appears that on the basis of missing report, the police registered Gum Registration No.42/2019, in which enquiry was conducted. The learned Counsel for the petitioner is unable to point out any provision of law to support his contention that enquiry cannot be conducted on the basis of missing report.

14. Likewise it has been submitted that the postmortem note bears a reference that it was conducted in ADR No.42/2019. On that basis, it has been argued that the ADR report has been suppressed since there is specific reference in postmortem report. The said submission is devoid of merit, since Gum Registration No.42/2019 was registered and mere referring the same as ADR does not change the colour. It is submitted that the postmortem note bears exact time of death as 4.15 p.m. on 17.12.2019. According to the

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petitioner, when the dead body was found in the streamlet, as to how exact time has been mentioned in the postmortem notes. The evidence of medical officer is yet to be recorded in which clarification to that extent can be obtained. Merely because postmortem note bears exact time of death, it cannot be reason to hold that the investigation was faulty or partisan. The investigating officer has nothing to do with what has been mentioned by the Doctor in the postmortem notes.

15. The learned Counsel for the petitioner would submit that the seizure of two wheeler of the deceased Saurabh is quite doubtful. He took us through the seizure panchnama dated 16.12.2019. It is argued that as per seizure memo, the two wheeler was seized from Komal Katare. In that context we have been taken through the cross examination of P.W.1 Komal Katare, wherein he admits that the two wheeler was not seized from him. As a matter of fact on the basis of admission given in the cross examination, it cannot be said that the investigation was improper. Moreover, perusal of the seizure memo indicates that the place from where the two wheeler was seized was back side ground of MIET College. Therefore, it is apparent that the

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two wheeler was seized from open space therefore, there is no substance in saying that it was seized from the possession of Komal Katare.

16. The learned Counsel for the petitioner attracted our attention to the statement of petitioner Ankit recorded by the police on 20.12.2019 in terms of Section 27 of the Indian Evidence Act. It is submitted that the said disclosure was video-graphed, which itself is illegal as it violative of Article 20[3] of the Constitution of India. In support of said contention, reliance is placed on the decision of Supreme Court in case of **Munikrishna @ Krishna Etc. .vrs. State by Ulsoor PS – 2022 [4] RCR [Cri] 794 (Special Leave Petition {Cri} No.8792/2022 dated 30.09.2022]**. We have gone through the said decision, but, unable to find any proposition of law indicating that video recording of disclosure statement amounts to violation of Article 20[3] of the Constitution of India. The said decision was on different facts, which has no bearing to the case in hand. It reveals from the said statement that the petitioner has expressed his willingness to show the place where the conspiracy was hatched. Whether said disclosure is admissible is a matter of appreciation in

trial, which cannot be commented in this petition.

17. The petitioner has relied on the decision of the Supreme Court in case of **Devendra Nath Singh .vrs. State of Bihar and others – 2022 Livelaw [SC] 835**, to contend that re-investigation can be directed under inherent powers vested with this Court under Section 482 of the Code of Criminal Procedure. We have no confusion in our mind about existence of such powers with this Court, however, it is to be used in befitting circumstances. The petitioner has also relied on the decision of Supreme Court in case of **Mithilesh Kumar Singh .vrs. State of Rajasthan - 2015 [9] SCC 795**, which does not help the petitioner in any manner.

18. The learned Counsel for the petitioner would submit that the receipt of handing over dead body bears a reference that the body was handed over to the relative with clothes. In that regard, our attention has been invited to cloth seizure panchnama showing that clothes of deceased were seized from one Ashish Agnihotri. Pointing said discrepancy, it has been argued that when the body was handed over with clothes, how the clothes were later seized

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from Ashish Agnihotri. In the same line, some discrepancies were pointed out towards seizure of four wheeler which was used in the commission of the crime. All these aspects are matter of trial, since recording of evidence is underway. The investigating officer is yet not examined, to whom the defence can put all these query/questions to seek explanation. These submissions are quite premature at the midst of the trial, which cannot be entertained at all. Obviously, the same would affect the fairness of the trial.

19. It has been submitted that though the investigation papers contain statements of eye witnesses, however, they are not reliable. It is submitted that prior test identification parade was not conducted and all disclosure statements are inadmissible. Basically this is not the stage to decide the credentials of witnesses, as it is a matter of appreciation at the time of final adjudication. Likewise, admissibility of disclosure statement cannot be prejudged in this petition. As regards to non-holding of prior test identification parade is concerned, the same is not the requirement of law. It is well settled fact that identification in Court is a substantive evidence.

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However, all these aspects cannot be dealt with at the midst of the trial, and therefore, we refrain ourselves from commending on the worth of said material.

20. We may note that the investigation was complete and charge sheet has been filed on 13.03.2020. The trial Court has framed the charges long back. The prosecution has examined in all 4 witnesses in the trial, particularly the evidence of 4th witness was recorded on 25.04.2022, and then for near about one year the trial is stand still. It requires to be noted that this petition is filed on 29.08.2022 i.e. after 1 ½ years from the filing of the charge sheet. We fail to understand that if the petitioner was aggrieved by the mode and manner of investigation, what compelled him to wait till recording of evidence of 4th witness for challenging the process of investigation. Almost all the submissions made by the petitioner is a matter of defence in trial which cannot be dealt with at this juncture. No exceptional circumstances are made out to direct re-investigation at the midst of the trial. As regards to the claim for grant of bail is concerned, already the petitioner has failed to secure bail from the

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Court. Under the guise of filing of this petition he cannot seek bail which otherwise he failed to secure from the competent Court.

21. For the aforesaid reasons, Criminal Writ Petition is totally devoid of merit, rather filing of petition has stalled the trial, particularly when the accused are under trial prisoners. Already the Courts of law are flooded with litigation. Certainly this type of frivolous litigation would consume the time of Court which otherwise would have been devoted for deciding genuine cases. The approach of the petitioner of moving this Court at the midst of the trial knowing fully well that already 4 witnesses have been examined, itself postulates his otherwise intention. We strongly deprecate the tendency of such litigants of playing with the system as a game of chance. The time has come to impose costs on such litigant for wasting the public resources. In view of above, Criminal Writ Petition is dismissed with cost of Rs.10,000/- to be deposited by the petitioner with the Registry of this Court within a period of two weeks from the uploading of the order. Rule discharged.

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22. The matter be placed for before the Court for noting compliance on 26.04.2023.

JUDGE

JUDGE