



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

CRIMINAL WRIT PETITION NO. 53 OF 2024

**AFROZ KHAN ASIF KHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Mr. Syed G R
Addl.PP for Respondent/State : Mr. M.M. Nerlikar

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 24 APRIL 2024

PER COURT :

. Heard.

2. By way of this petition under Article 226 of the Constitution of India, the brother of the deceased has been raising several questions about the manner in which investigation has been conducted into his murder by the accused persons. It is being suspected that the murder was committed by hatching a conspiracy. To buttress this suspicion, it appears that the petitioner has been relying upon some circumstances like recovery of some data from the mobile phone of the deceased and the alleged conversation therein. The petitioner is also relying upon a circumstance wherein the wife of the accused had been to his house and met his mother wherein she had asked the petitioner's mother to convince the deceased not to demand money as he was having a backing.

3. Per-contra, the learned APP would take us through the papers of the investigation and the charge-sheet to demonstrate as to how, the evidence and the circumstances are writ large to reveal the complicity of the sole accused. The prosecution has been relying upon circumstantial evidence. There are statements of the witnesses who had seen the deceased in the company of the accused lastly. There is CCTV footage as well and according to him, the investigation has been rightly concluded in implicating the sole accused.

4. Indeed there are certain circumstances being attributed by the petitioner like having indulged in some correspondence with the Superintendent of Police informing about recovery of some data from the mobile phone of the deceased about which there is apparently no investigation. However in our considered view, it would not be appropriate for the High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India, to go into and examine all these aspects particularly in the light of the observations in the matter of **Vinubhai Haribhai Malaviya Vs. State of Gujarat**, AIR 2020 SC (Cri) 289. A careful reading of the decision would indicate that any person aggrieved by the manner of investigation, can approach the trial Court and resort to the appropriate remedies as indicated therein, soliciting further investigation under Section 173(8) of the Code of Criminal Procedure or even putting up a request under Section 156(3) of the Cr.PC.

5. In the matter of Vinubhai Haribhai Malaviya (supra), the

Supreme Court has even gone to the extent of observing that a trial Court has power to direct investigation by some different officer.

6. In our considered view, it would not be appropriate for this Court in the process of entertaining the present petition to make some observations, which otherwise would be imperative if we decide to consider the request of the petitioner and record reasons. In order to avoid any potential prejudice to either of the sides, it would be appropriate that the matter is considered by the trial Court and for which the petitioner will have to approach the trial Court as laid down in the matter of Vinubhai Haribhai Malaviya (*supra*).

7. We dispose of the writ petition by granting liberty to the petitioner to take recourse to the decision in the matter of Vinubhai Haribhai Malaviya (*supra*). If any such request is made, the trial Court shall consider it on its own merits.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

Najeeb