

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

958 CRIMINAL WRIT PETITION NO. 751 OF 2021

**MITHUN BARSULAL SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Mr. D.S. Patil
h/f. Mr. S.S. Gangakhedkar
APP for Respondents : Mr. G.A. Kulkarni
...

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

DATE : 16 JANUARY 2024

PER COURT :

We have heard both the sides.

2. The petitioner who is the father of the deceased who was a boy aged seven years is requesting for transfer of enquiry / investigation into the cause of his death.

3. Learned Advocate for the petitioner submits that the seven year old boy was staying with his maternal aunt. The incident has taken place at around 09:30 p.m. The boy was allegedly found to have hanging to a rope inside the bedroom. However, the panchnama does not demonstrate that in fact the door of the bedroom was bolted from inside which is the version of the witnesses whose statements have been recorded. He also points out that even the spot panchnama does not indicate any possibility as to how the child could have managed to reach

to the height where the rope was tied and could have hanged himself. He also points out that even inconsistent with the mandate of Section 174 of Cr.P.C., there is no intimation given to the Executive Magistrate. Coupled with these, he would submit, the petitioner has been entertaining suspicion because of the matrimonial dispute and pertaining to the custody of the child. He would submit that the investigation has not been carried out with the expected seriousness and needs to be enquired into and investigated afresh.

4. Learned APP submits that admittedly neither of the parents was staying with the child. He was with the maternal aunt and both the parents were in Dombivali. There are statements of the witnesses particularly the neighbour who after hearing the hue and cry peeped into the room through window and managed to cut the rope to which the boy was hanging. Though there is absence about dislodging of bolt or breaking open of the door, in the spot panchanama that is merely a minor lapse. The statements of the witnesses cannot be disbelieved.

5. There is a medical report about the deceased having died due to the asphyxia due to hanging. Though it is unfortunate, there is nothing to demonstrate that there was some criminality involved. Enquiry has been conducted properly.

6. Admittedly, a seven year old child of the petitioner was found hanging to a rope inside the bedroom of the house where he was

cohabiting with the maternal aunt. Admittedly, both the parents were not residing with the child and were residing at Dombivali. However conspicuously, the papers of the investigation do not indicate about the immediate intimation having been given to the Executive Magistrate as is required under Section 174 of the Cr.p.c.

6. Though the Medical Officer who performed the autopsy has certified the cause of death as asphyxia due to hanging, it was expected of the officer conducting the enquiry to meticulously ascertain the condition of the room. It ought to have been borne in mind the fact that it was a residential house wherein the child was cohabiting with the maternal aunt who in all probability was also present inside the house. The spot panchanama is absolutely silent about how the door was unbolted from inside albeit there is statement of the neighbour. Similarly, the spot panchnama is also absolutely silent to ascertain what was the height at which the rope was tied to the two ends. There is nothing else in the spot panchanama to demonstrate as to how the child could have managed to reach up to the rope and thereafter, was able to hang himself with a scarf. It is not the version in the result of the enquiry officer that it was an accidental death. Bearing in mind these facts it was certainly imperative that the spot panchnama was conducted with more seriousness and should have addressed the aforementioned aspects.

8. Though there are several other angles being attributed by the petitioner, we do not see any reason to go into all that. However,

noticing that the enquiry conducted does not indicate and sufficiently answer the queries which we have raised, in our considered view, it would be appropriate that some higher ranked officer undertakes independent scrutiny and arrives at an equally independent conclusion.

9. Without expressing anything, we dispose of the writ petition by directing Sub-Divisional Police Officer of Deopur (West), Dhule, to conduct independent enquiry and submit a report to this Court within four weeks from today.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]