



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1414 OF 2024

MEHARUN USMAN SHAIKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for the Petitioners : Mr.Sayyed Tauseef Yaseen
APP for Respondents-State : Mr.A.M.Phule

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CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.

DATE : 07 AUGUST, 2024

ORDER :-

1. Not on board. Taken on board.
2. Upon mentioning, the petition has been taken up for hearing today at 02:30 p.m.
3. Heard.
4. Learned Advocate for the petitioners has invoked the Constitutional Powers of this Court under Article 226 of the Constitution of India for following prayers.

“B. By appropriate writ, order or direction, Respondents may kindly be directed to decide Representation dated 18-07-2024 as EXHIBIT-D submitted by the petitioners.

C. By appropriate writ, order or direction, Respondents may kindly be directed to transfer the investigation in crime No.163/2024 registered with Dharur Police Station to any special investigation team or by transferring the said investigation to any other senior police officer.”

5. The petitioners contend that in respect of a past incident of brutal murder and sexual assault, Crime No.45 of 2015 was registered under Section 302 of the Indian Penal Code (IPC) against the original accused persons. That case was decided and the original two accused persons, after holding them guilty, were sentenced to death. Those persons approached this Court and this Court allowed the appeal and acquitted them on 14-08-2017 and now the matter is before the Hon'ble Supreme Court. The Special Leave has been granted.

6. It is the contention of the petitioners that the accused persons are having grudge against them and therefore, alongwith other accused persons, they had come to the house of the petitioners around 08:00 p.m. to 08:30 p.m. on 07-06-2024. The petitioners have named ten persons. It is then stated that the FIR was lodged by

petitioner no.1, however, it has not been properly recorded by Police and therefore, the petitioners filed representation on 18-07-2024 to the Superintendent of Police, District Beed. They have contended that offence under Section 307 of the IPC should be added taking into consideration the injuries sustained and the motive behind the attack.

7. As aforesaid, we have referred the prayers and the history / background that has been given. The first and foremost fact is that as on today, it appears that Crime No.0163 of 2024 has been registered on 08-06-2024 with Dharur Police Station, District Beed for the offence punishable under Sections 324, 323, 504, 506, 147, 148, 149 of the IPC against ten persons. Taking into consideration the medical report, we cannot rule out any possibility of addition of any Section for which direction cannot be given at this stage. If the contents of the FIR were not fully in pursuant to the oral report, then the petitioner can still lodge a private complaint or pray for investigation under Section 156(3) of the Code of Criminal Procedure as the case may be.

8. Learned Advocate for the petitioner then raised a question as to whether second FIR can be maintainable.

We are not making any observation but still, if the facts are not written down in the FIR as per oral report, we mention that it can be agitated by another mode. We have seen the representation that has been made to respondent no.2. By way of representation, the petitioners cannot ask for registration of the FIR by submitting that such directions be given by this Court under Constitutional powers under Article 226 of Constitution of India. We are considering the observations of the Hon'ble Apex Court in *Sakiri Vasu v. State of Uttar Pradesh and Others* reported in (2008) 2 SCC 409, which are thereafter, relied in *Sudhir Bhaskarrao Tambe v. Hemant Yeshwant Dhage* reported in (2016) 6 SCC 277 and in *M.Subramaniam and Another v. S.Janaki and Another* reported in (2020) 16 SCC 728, wherein in categorical words, it has been held that High Court cannot give directions for registration of crime by exercising its Constitutional powers under Article 226 of the Constitution of India when the other two modes are available i.e. firstly, a person can approach the higher authority, which is having supervisory powers and secondly, in alternative, he can approach the Magistrate under Section 156(3) of the Code of Criminal Procedure.

9. Under such circumstances, the prayers cannot be granted as they are worded. However, as stated in ***M.Subramaniam and Another*** (supra) case, we observe that present order should not be taken as an impediment by the Magistrate, if the petitioners approach under Section 156(3) of the Code of Criminal Procedure.

10. With these observations, writ petition stands disposed of.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

SPT