



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1662 OF 2023

ABC

Age: XYZ years, Occ: XYZ,

R/o: XYZ

... PETITIONER

VERSUS

The State of Maharashtra
through the Police Inspector,
Molgi Police Station,
Taluka Akkalkuwa,
Dist. Nandurbar

... RESPONDENT

...

Advocate for Applicant : Mr. Amit S. Savale

Addl.PP. for respondent/State : Mr. M.M. Nerlikar

...

CORAM

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

Reserved on : 28.02.2024

Pronounced on : 05.03.2024

ORDER (PER : MANGESH S. PATIL, J.) :

Heard.

2. The petitioner who is mother of the deceased has filed this petition seeking a direction for re-investigation into the Crime registered with Molgi Police Station for the offences punishable under Section 305, 354A, 500 and 504 of the Indian Penal Code read with Section 4,6,8 and 12 of the Protection of Children from Sexual Offences Act, 2012. She is also praying for direction to initiate an inquiry against the Investigating Officer as well as the Medical Officer who conducted the postmortem examination.

3. The learned advocate for the petitioner would submit that the victim was a minor girl, she was gang raped and murdered, however, the Investigating Officer with an ulterior motive has been carrying out the investigation as if it was a matter of suicide. He would submit that the deceased was staying at Chanwaipada, whereas, the parents that is petitioner and her husband were staying in Akkalkuwa. On 15.07.2023 petitioner's brother found the deceased hanging at around 8.00 am. There were several injuries on the person of the victim. The applicant could get the photographs of the body at the mortuary where postmortem was conducted. She had noticed several injuries and had given the details which she had noticed even in her statement under Section 164 of the Code of Criminal Procedure. In spite of several efforts and persuasion, the matter is not being investigated impartially. It is only after the matter was raked up in the Legislative Assembly that crime was registered on 18.07.2023 with a distorted version. The petitioner had even named the suspects but those were not interrogated. Subsequently, even the mobile clip of video recording of the deceased victim could be traced, wherein, she had expressly stated about having been raped, still the offence of rape was not included and by now precious time has been lost. He would submit that the postmortem examination was not properly conducted by the Medical Officer on first occasion. Re-postmortem examination was therefore conducted, however, by the time the body was not in appropriate condition, which has resulted in valuable

piece of evidence getting lost. Primary autopsy was done at the Rural Hospital Molgi. It is only after the complaint was made by the petitioner and pursuant to the order of Sessions Court, Shahada, the body was exhumed and the postmortem examination was conducted at the Sir J.J. Hospital, Bombay on 23.08.2023. Consequently, nothing incriminating could be traced in the re-postmortem examination. All these circumstances clearly indicate utter incompetency of the Investigating Officer or would give rise to well founded suspicion of the petitioner that the investigation is not being conducted in an impartial manner.

4. The learned APP would take us through the papers and would submit that the Investigating Officer has been changed and the investigation has been handed over to some other officer. He would carry out the further investigation in an impartial manner and would file supplementary charge-sheet, in the light of the statements of the petitioner and the witnesses recorded under Section 164 of the Code of Criminal Procedure and the evidence revealed, particularly in the form of video clip of the deceased, wherein, she had complained of having been raped by an individual which she had described. Even the forensic report has been received about the exact date of recording of the video clip. Already one Rahul Umbriya @ Amarsing Valvi, Sushil Saysing Vasave and Vansing @ Vanya Kochriya Vasave have been implicated while filing charge-sheet.

5. The Forensic Report indicates that the video has been recorded on 13.07.2023 at around 19.32.24 hours. He would therefore submit that the present Investigating Officer would undertake further investigation under Section 173(8) of the Code of Criminal Procedure and would file supplementary charge-sheet.

6. We have considered the rival submissions and perused the papers.

7. At the outset, it is necessary to note that the Investigating Officer who had started the investigation has been replaced and there is nothing to demonstrate that the incumbent Investigating Officer would not be able to carry out further investigation impartially and with utmost care and caution. Even if the petitioner has grievance against the earlier Investigating Officer, her concern gets duly addressed at least partially in view of handing over of the investigation to the incumbent Investigating Officer.

8. Again, when already a charge-sheet has been filed under Section 173 of the Code of Criminal Procedure and the Court of Additional Sessions Judge at Shahada is seized of the matter and when re-postmortem examination was conducted as per the directions of that Court, the petitioner can resort to the remedies of approaching the trial court, even if she is still aggrieved about the particular aspect of investigation, as is contemplated in the matter of **Vinubhai Hirabhai**

Malaviya V. State of Gujarat, (2019) 17 SCC 1, which keeps all the avenues open like moving an application under Section 156(3) of the Code of Criminal Procedure or seeking further investigation under Section 173(8) of the Code of Criminal Procedure, for being agitated before the trial court.

9. So far as the allegations of the petitioner against the earlier Investigating Officer, it would require some inquiry into those allegations. Issues being raised factual ones, it would be appropriate that the petitioner approaches the Division Level Police Complaint Authority, in view of the Regulations published vide Notification No. DPCA-0118/CR-12/Pol-14, dated 31.7.2018 which have been established for *inter alia* inquiring into the allegations against the police personnel. It is only thereafter that a further action as desired by the petitioner can be initiated or directed, depending upon the fact finding scrutiny by the authority.

10. Though several things have been brought to our notice by the learned advocate for the petitioner like the photographs, the injury found on the toe and the version of the petitioner in her statement recorded under Section 164 of the Code of Criminal Procedure, it would not be appropriate for this Court to make any comments on the material collected by the Investigating Officer to draw any inference as to what actually had happened.

11. As is mentioned earlier, when the matter is pending before the trial court in the form of the criminal case pursuant to the charge-sheet filed and when the incumbent Investigating Officer is ready to undertake further investigation and in fact he is actually even now engaged in further investigation, we feel that it would not be appropriate for us to make comment on each piece of evidence either in isolation or even to examine their cumulative effect.

12. Since already even the steps have been taken from time to time and forensic analysis has been done in respect of the video clip from the mobile of the deceased, when the incumbent Investigating Officer as is being submitted by the learned APP, would be carrying out further investigation, in our considered view, the matter can be disposed of granting liberty to the petitioner, as mentioned herein above, to approach the trial court and the Division Level Police Complaints Authority.

13. The Writ Petition is disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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