

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.4107 OF 2024

Anna Maruti Shinde

... Petitioner

Versus

The State of Maharashtra

... Respondent

Mr. Amit Katarnaware a/w Ms. Pooja Dongre, Mr. Aditya Katarnaware and Mr. Nitesh Paswan for the Petitioner

Mr. H. S. Venegavkar, P.P a/w Mrs. P. P. Shinde, A.P.P for the Respondent-State

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
WEDNESDAY, 25th SEPTEMBER 2024**

P.C :

1 By this petition preferred by the father of the deceased, the petitioner seeks; constitution of a Special Investigating Team (`SIT') to investigate into the alleged murder of the deceased; monitoring of the said investigation by this Court; a direction to the authorities to register an FIR against the concerned officers involved in the conspiracy of killing the deceased; preservation of the CCTV camera footage, from the time when the deceased was taken into custody from Taloja

Prison till he was taken to Chhatrapati Shivaji Hospital at Kalwa and compensation from the authorities.

2 According to the petitioner, the petitioner was not killed in an encounter, but it was a case of custodial death/murder and therefore, it was incumbent on the police to register an FIR as against the concerned officers who were present in the vehicle at the time of the incident. Learned counsel for the petitioner submits that the petitioner and his wife had interacted with their son (Akshay Shinde-deceased) at about 3:30/4:00 p.m. on the very same day i.e. on 23.09.2024 at Taloja Jail and that there was nothing to indicate that the deceased was in a troubled state of mind. Learned counsel for the petitioner relied on several judgments annexed to the petition vis-a-vis custodial death.

3 Mr. Venegavkar, learned P.P has tendered a time-line of the events that took place on **23/24.09.2024**. According to Mr. Venegavkar, a case was registered with Boisar Police Station

at the instance of the deceased's wife, which was registered vide 00 FIR, on **05.09.2024**. He submits that the said FIR was transferred from Boisar Police Station to Badlapur Police Station and was registered as C.R. No. 409/2024. The said C.R was registered by the Badlapur Police Station on **07.09.2024** for the alleged offences punishable under Sections 377, 324, 323, 504 of the Indian Penal Code. According to Mr. Venegavkar, after registration of the said C.R i.e. C.R No. 409/2024 with the Badlapur Police Station, the investigation of the said C.R was transferred to Crime Branch, Thane, on the very same day i.e. on **07.09.2024**. It is further submitted that on **20.09.2024**, the Crime Branch, Thane made an application before the jurisdictional Magistrate and sought a production warrant of Akshay Shinde (deceased). He submits that the learned Magistrate issued orders on the very same day and granted production warrant at about 12:00 p.m, pursuant to which, the said warrant was carried to the Special Court (POCSO), Kalyan, where the learned Special Judge at about 3:30 p.m, gave

permission to the Crime Branch, Thane to take custody of the accused (Akshay Shinde) from Taloja Jail. Mr. Venegavkar further submits that pursuant to the said order, on **23.09.2024**, the police from the Crime Branch, Thane, left for Taloja Jail at about 2:00 p.m for obtaining the custody of Akshay Shinde; that at about 3:30 pm, Akshay Shinde was taken in custody, after all paper work and formalities were completed; that at about 4:30 p.m, the police met the jail authorities and completed the paper work and formalities and at about 5:30 p.m, Akshay Shinde was taken out of the jail premises; that at about 5:30 p.m, when the vehicle left, the PI was sitting next to the driver in the front seat of the van, while API and two Hawaldars sat on the rear side of the vehicle; that the said vehicle proceeded towards Thane via Mumbra; that at about 5:55 p.m., API More made a call to PI sitting in the front of the vehicle and informed him that the accused i.e. Akshay Shinde was getting unstable and was quarreling with the police, pursuant to which, at about 6:05 p.m, the PI asked the driver to stop the vehicle on the side (near Shil-

Daighar Police Station, near Shil Phata); that the PI then came to the rear side of the vehicle and sat along with the three Police Personnel and accused-Akshay Shinde; that at about 6:15 p.m, when the vehicle was passing through the Mumbra Bypass Road, near Mumbra Devi staircase, the accused-Akshay Shinde suddenly snatched the service pistol of API Nilesh More from his waist; that during the said scuffle, API Nilesh More was injured i.e. he received a bullet injury on his thigh; and the accused took the service weapon of API Nilesh More and fired two bullets towards the officers sitting in front of him, which missed the said officers. According to Mr. Venegavkar, PI Sanjay Shinde immediately pulled out his service pistol and fired at the accused-Akshay Shinde which hit the accused on his head. The said time-line given by Mr. Venegavkar is taken on record.

4 Mr. Venegavkar, learned P.P states that the investigation has been transferred from Crime Branch, Thane to State CID, yesterday.

5 During the course of the hearing of the petition, we noticed that none was present from the State CID, despite investigation being transferred to State CID, nor have the papers been handed over to State CID. Infact, today, instructions were being given by the DCP Mr. Shivraj Patil from the Crime Branch, Thane. Mr. Venegavkar assures that the papers will be forwarded to the State CID today itself, during the course of the day. Statement accepted.

6 When questioned, Mr. Venegavkar states that the hand-wash of the deceased has been taken at J.J Hospital; vehicle in which the incident took place has been seized under a panchanama and so have the empties and the weapons used in the incident. He further states that the hand-washes of the five Police Personnel present in the vehicle will also be taken today, during the course of the day. Statement accepted. The finger prints of the deceased appears to have already been taken. If not taken, to be taken. Similarly, the finger prints of all five Police Personnel

present in the vehicle also to be taken.

7 Mr. Venegavkar states that the pistols and cartridges fired from the weapons will be forwarded to the Forensic Science Laboratory today itself. Statement accepted.

8 Mr. Venegavkar further on instructions states that the DCP of Crime Branch has already sent requisition letters to various persons/authorities to preserve the CCTV footage from Taloja Jail till Chhatrapati Shivaji Hospital at Kalwa. Statement accepted.

9 Mr. Venegavkar further assures us that the State CID will take into custody the CCTV footage from the time the accused departed from Taloja Jail, including the movements of the deceased prior thereto in Taloja Jail, till he was taken to the Chhatrapati Shivaji Hospital at Kalwa, in accordance with law. Mr. Venegavkar also assures that the CCTV of the visitors' area where the petitioner's parents visited and interacted with the

deceased on 23.09.2024 between 3:00 p.m. and 4:30 p.m. will also be collected by the State CID. Statements accepted.

10 Mr. Venegavkar further assures that the CDRs from 22.09.2024 to 24.09.2024, of all the five persons present in the vehicle, will be collected by the State CID and appropriate requisitions will be made to the service providers for the same.

11 Mr. Venegavkar further informs this Court that the entire site of the incident has been video-graphed by PSI Shri Rajendra Toranmal on his mobile i.e. E-Sakshya App and the photographs of the scene of incident have been taken by one Shri Harshwardhan Kharat, Police Photographer. He further states that the inquest as well as the postmortem have been video-graphed. Mr. Venegavkar further informs that since the deceased died whilst in custody of the police, as mandated in law, the Human Rights Commission and the jurisdictional Magistrate have been informed of the same.

12 As far as registration of the FIR on the basis of the petitioner's complaint is concerned, as sought for in this petition, Mr. Venegavkar seeks time to take instructions.

13 On the request of the learned P.P, stand over to **3rd October 2024**. A photo copy of the papers of investigation carried out so far, be submitted to this Court in a sealed envelope, during the course of the day.

14 All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.