



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 133 OF 2022

Sima Firdos Salim Khan,  
Age: 57 years, Occ. Housewife,  
R/o Plot o. 85, New Mankapur, Behind  
Mohammadia masjid, Mankapur, S.O.  
Nagpur, Maharashtra 440 030

...Petitioner

// VERSUS //

1. Superintendent, Nagpur Central Prison,  
having his office at Central Prison Wardha  
Road, Nagpur
2. State of Maharashtra, through Station  
incharge Police Station Dhantoli, At  
Dhantoli, Nagpur
3. Dean, Government Medical College, Nagpur.  
Having his office at GMC, Nagpur
4. State of Maharashtra, through Additional  
Secretary, Department of Home, Mantralaya,  
Mumbai
5. Inspector General of Prison and Correction  
Services, Having his office at IG Office,  
Kasba Peth, Pune

... Respondents

Shri N.B.Rathod, Advocate for the petitioner.  
Shri M.K.Pathan, APP for the respondents/State.

CORAM : SMT. VIBHA KANKANWADI, AND  
MRS. VRUSHALI V. JOSHI, JJ.

Reserved on : 25<sup>th</sup> JUNE, 2024.  
Pronounced on : 3<sup>rd</sup> JULY, 2024

**ORAL JUDGMENT : [ PER : SMT. VIBHA KANKANWADI, J.]**

**Rule.** Rule made returnable. Heard finally by consent of the parties.

2. Present petition has been filed by the mother of accused incarcerated at Nagpur Central Prison since 2013 as a under trial. She has invoked the constitutional powers of this Court under Article 226 of the Constitution of India for following reliefs:

A. That the Hon'ble Court be pleased to direct enquiry and investigation in the incidence dated 21.02.2022 to be conducted under supervision and monitoring of a former Hon'ble High Court Judge by constituting such powers as would enable him/her to bring forth full and unvarnished truth, as also to fasten the liability on those of the officers who were directly involved in the crime and also those who tried to shield the culprits.

B. That the Hon'ble Court be pleased to hold and direct that the son of the petitioner is entitled to be treated at government costs in the facility of his choice and is also entitled to be given pecuniary compensation for injury caused and violation of the fundamental rights.

3. Heard Shri N.B.Rathod, learned advocate for the petitioner and Shri M.K.Pathan, learned Additional Public Prosecutor for the respondents/State.

4. Learned advocate for the petitioner vehemently submits that when the petitioner had gone to meet her son Shoaib Khan in jail, she came to know that her son has been beaten by jail police. He has been admitted in Civil Hospital. She went to Civil Hospital and met her son and came to know that his left leg has been fractured and there was injury to his head. Upon inquiry from the son, she got the information that her son was beaten by Officer Hemant Ingole with the help of wooden chair and stick. She had given a written complaint to Police Inspector, Dhantoli Police Station on 22<sup>nd</sup> February, 2022. However, no action was taken by police. The incident had occurred on 21<sup>st</sup> February, 2022. There was absolutely no delay in lodging the said complaint. In fact, her written complaint ought to have been treated as First Information Report, but till today when no action has been taken and it was not even informed to the petitioner, she has knocked the doors of this Court. He relies on the decision in Sunil Batra (II) Vs. Delhi Administration; (1980) 3 SCC 488; wherein guidelines were given in respect of the constitutional and administrative aspects of the prison justice. It was reiterated that there is imperative, as implicit in Article 21, that life or liberty, shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Even the prisoners cannot be deprived of any of the rights enshrined under the Constitution of India.

5. Learned APP relied on the affidavit-in-reply filed by Ms. Deepa Vaibhav, Superintendent of Nagpur Central Prison, Nagpur. Learned APP submits that son of the petitioner is involved in as many as 29 offences of which list has been given. Her son, on the date of incident,

was under trial prisoner in a case under Maharashtra Control of Organised Crime Act, 1999 (MCOCA) and other offences, mainly are under Sections 395 and 307 of Indian Penal Code. He has even committed the offence of jail breaking along with four other accused persons. He had escaped from the jail, came to be arrested and brought back. The punishment has been imposed in respect of jail breaking. Her son invents new acts thereby causing trouble to the police and jail authorities. Even as regards the incident dated 21<sup>st</sup> February, 2022 is concerned, he had assaulted Jailor in the jail premises. Said Ingole had tried to save herself and in the process of said defence, Shoaib Khan had fallen down causing him injury. Report was immediately submitted to the Special Judge, Presiding Over, MOCOC case. All those details of the incident have been given in the affidavit-in-reply supported by the documents showing the activities carried out by son of the petitioner to escape from the jail. He further relied on the affidavit filed by H.R. Madavi, Police Inspector of Dhantoli Police Station. It has been stated that the preliminary inquiry in respect of complaint dated 22<sup>nd</sup> February, 2022 filed by the petitioner was made. CCTV footage was asked. However, the CCTVs were not in operation at the relevant time. In respect of attack on jail authority, the offence vide CR No. 54 of 2022 under Sections 332 and 353 of Indian Penal Code has been registered with Dhantoli Police Station against the son of the petitioner. When the preliminary inquiry has been made and no substance was found, the police have not gone ahead with the complaint.

6. Learned APP raises objection regarding maintainability of the writ petition while submitting that the petitioner had alternate efficacious remedy to approach before the learned Magistrate under Section 156(3) of the Code of Criminal Procedure (in short hereafter referred as “CrPC”) and in that circumstances a writ cannot be issued for the inquiry. He relies on the decision in M.Surbraminiam and another Vs. S. Janaki and another: (2020) 16 SCC 728, wherein it has been held that “if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) of CrPC. If such an application under Section 156(3) of CrPC is made and the Magistrate is, *prima facie*, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.” He therefore, prays for the dismissal of the petition.

7. Here the first and foremost fact to be noted is that a complaint came to be filed with Police Inspector, Dhantoli Police Station immediately on the next date of the alleged incident. If that complaint was disclosing that a cognizable offence has been made out then it was

mandatory for the Police Station Officer, Dhantoli Police Station to lodge the First Information Report. We rely on the constitutional Bench decision in Lalita Kumari Vs. Government of U.P 2014(2) SCC 1, wherein it has been held that registration of FIR is mandatory under Section 154 of the CrPC, if the information discloses commission of an cognizable offence and no preliminary inquiry is permissible in such a situation. It is also to be noted from affidavit filed by the PI Dhantoli Police Station Mr. Madavi that preliminary inquiry appears to have been made. However, he has not produced all the documents along with affidavit. It is also to be noted that affidavit of Dr. Gajbhiye who is dean of Government Medical College is also filed to support the prosecution and to place on record as to when and in which manner Shoaib Khan was admitted to the hospital and what treatment was given to him. We are not concerned with the said affidavit. The fact remains is that when the complaint was filed on 22<sup>nd</sup> February, 2022 which ought to have been taken to logical end and whatever decision was there ought to have been communicated to the petitioner. The inquiry also appears to have been made behind the back of the petitioner. Perusal of the complaint would disclose that cognizable offence was made out therefore, in view of the *Lalita Kumari* (supra), the Police Officer could not have avoided the duty from registering the offence. We do not want to get carried away because of the pendency of so many cases against Shoaib Khan and also his alleged past conduct regarding breaking of jail, fleeing away and bringing back after arrest. In view of the *Sunil Batra* (supra) and rights in the constitution of India itself even the prisoners like Shoibh Khan are having

rights to protect their person and liberty. However, this right is not absolute. It comes with restriction and the restriction can be on the basis of legal provisions or within the four corners of law. At the end the authority may come to a conclusion that a particular complaint which has been tried to be lodged as a FIR does not disclose true facts or no such incident had taken place and for that purpose or for arriving at that conclusion certainly procedure ought to have been undertaken. In *Lalita Kumari* (supra), it has been observed/directions are given as follows “120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.” As per the said decision when the directions are given it is stated “While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry”.

8. Therefore, if in this case also it was found that the preliminary inquiry was necessary, yet it ought to have been completed within a period of seven days from 22<sup>nd</sup> February, 2022.

9. We are aware about the decision in *M.Surbraminiam and another* (supra), wherein it has been categorically stated that writ petition cannot be a first course seeking directions from High Court for filing of First Information Report unless the remedies (i) application under

Section 154(3) of the CrPC before the Superintendent of Police or (ii) under Section 156(3) of the CrPC before the competent Magistrate to exhaust. Here, the petitioner has not explained as to why she has not exhausted the said remedies though she had filed written complaint on 22<sup>nd</sup> February, 2002, she could have filed an application under Section 154(3) of the CrPC before the Superintendent of Police or she could have taken recourse under Section 156(3) of the CrPC before the competent Magistrate. When said explanation is not coming forward, we would hesitate in issuing directions to make inquiry and investigation in respect of incident dated 21<sup>st</sup> February, 2022. However, taking into consideration the fact that immediate actions were taken by the petitioner but there was resistance or reluctance on the part of Dhantoli Police Station, we may give liberty to the petitioner to have any of the above recourse i.e. either to file an application under Section 154(3) of the CrPC before the Superintendent of Police or to go before the learned Magistrate under Section 156(3) of the CrPC.

10. For the above said reasons, we dismissed the writ petition. However, grant liberty to the petitioner as aforesaid.

**[MRS. VRUSHALI V. JOSHI, J.] [SMT. VIBHA KANKANWADI, J.]**