



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

CRIMINAL WRIT PETITION NO.181/2024

Satish @ Tagya s/o. Ashok Tayade and Ors.

Vs.

State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. N. Nandeshwar, Advocate for Petitioners.

Mr. M. K. Pathan, A.P.P. for Respondent Nos.1, 2 and 5/State.

Mr. K. H. Anandani, Advocate for Respondent No.4.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 18/12/2024.

P.C.

. Heard.

2. The issue in the petition pertains to the counter criminal complaint filed by the petitioners against respondent No.4 so also by respondent No.4 against the petitioners. The Crime No.43/2023 for the offences punishable under Sections 307, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 4 and 25 of the Arms Act, 1959 came to be registered on 04.02.2023 in relation to an incident dated 03.02.2023 at the behest of the complainant Aniket Tapre i.e. respondent No.4.

3. We are informed that petitioner Nos.1, 3, 4 and 5 are arrayed as accused in the said crime and are chargesheeted, which is pending consideration before the Competent Criminal Court.

4. It is the case of the petitioners that immediately after the incident, the petitioners have approached the police Authorities with a prayer for registration of the offence against respondent No.4, however, no cognizance was taken of the said complaint which has subsequently led to filing of a written complaint initiated by the petitioners, which was endorsed by the Office of the Superintendent of Police on 10.03.2023.

5. It is the case of the petitioners that the said complaint was sought to be tendered by the petitioners in Police Station, Barshitakali on 10.03.2023 and before the other Authorities, but they have refused to acknowledge the same. Further contentions are, that the said complaint discloses a cognizable offence in a proceeding initiated by the respondent No.4 for grant of pre-arrest bail as against the complaint lodged by the petitioners, however, a stand is taken by the Investigating Officer i.e. Sub Divisional Police Officer in an affidavit sworn on 28.08.2023 thereby claiming that the investigation does not disclose a cognizable offence and as such, decided to file a 'B' summary in the matter. The said affidavit has led to confirmation of pre-arrest bail in favour of respondent No. 4.

6. It appears that one Advocate Mr. M. S. Ingle, who was representing the interest of the petitioners has applied under the Right to Information Act, 2005 seeking the copy of 'B' summary, which is referred to in the reply to the bail application dated 28.08.2023. Such application has not been tendered by the Investigating Officer on the

ground that the investigation was in progress.

7. In this background, it is claimed by the learned Counsel for the petitioners Mr. Nandeshwar that, when the respondent Investigating Officer has already submitted before this Court in the bail proceedings that they have decided to file 'B' summary, in such an eventuality, an incorrect/contradictory statement is made in the information provided to Advocate Mr. Ingle as regards to the offence still being under investigation. As such, he would claim that not only a bias approach is demonstrated on the part of the respondent Investigating Officer as could be inferred, but also the investigation need to be transferred or carried out by the senior most Officer of the District.

8. His further contentions are that the proceedings is also initiated by the petitioners before the Maharashtra State Backward Class Commission and the respondent Officers have not submitted their response of which this Court must also take a judicial note of.

9. It is claimed that the investigation carried out by the respondent Investigating Officer based on the complaint, which was acknowledged by the Office of the Superintendent of Police on 10.03.2023 was not properly investigated as the offence could have been said to be punishable under Sections 307 of the Indian Penal Code and also under the other Statutes. As such, it is claimed that the transfer of the investigation as prayed by the petitioners is quite justified.

10. As against above, based on the affidavit filed on behalf of respondent Nos.1 and 2, it is urged that the stand of the respondent Investigating Officer that the investigation does not disclose a cognizable offence and as such the decision taken to file 'B' summary still holds the field and the Investigating Officer intends to submit the 'B' summary, in case, if the present proceedings are decided. It is further claimed that the proceedings which are initiated before the Backward Class Commission, shall be duly responded to in due course of time and such proceedings have hardly any bearing over the merits of the present matter.

11. We have considered the rival claim. It is inferred from the record that the Sub-Divisional Police Officer in the bail proceedings has categorically stated in para 6 that they have decided to submit 'B' summary. Para 6 of the affidavit of the Sub-Divisional Police Officer reads thus :

"It is submitted that there are involvement of total 15 accused persons. During the course of investigation, the investigation officer has recorded statement of witnesses namely Bhagwan Katkar, Asha Katkar, Ganesh Kalge, Pushpa Kalge, Ganesh Ardhapurkar and the investigation officer has recorded statements of other witnesses also. All these witnesses stated that there is no such incident as alleged by the complainant has happened. Therefore, the investigation officer does not find any substance in the complaint of the complainant therefore forwarded the papers of investigation to file 'B' summary and

the approval is pending before the Additional Superintendent of Police, Akola and as soon as the approval is granted for filing 'B' summary the same shall be filed before the competent court. In view of the aforesaid there is no requirement of custodial interrogation of the present appellants in the present crime as the investigation officer is going to file 'B' summary in the present matter before the competent court."

12. The application under Right to Information Act, which was responded by the Officer, who has investigated the matter has stated that the copy of 'B' summary cannot be made available as the offence is under investigation. Such stand of the Investigating Officer is based on the provisions of Section 8 of the Right to Information Act, 2005. The exception which is carved out to the provisions of the Right to Information Act in express terms provide that in case, if the offence is under investigation, the information cannot be supplied to a party under the Right to Information Act.

13. In this background, the stand taken by the Sub-Divisional Police Officer is in tune with the scheme provided under Section 8 of the Right to Information Act, 2005 and the same cannot lead to drawing a conclusion that the investigating Officer has taken any contradictory stand. The aforesaid findings can be substantiated from the fact that what has been stated in the affidavit in para 6 sworn by the Sub-Divisional Police Officer in response to the bail application is being still ascertained by the Additional Superintendent of Police. In such an

eventuality, the aforesaid factual matrix cannot lead this Court to draw a conclusion that there is a bias approach or failure to carry out investigation at this stage of the proceedings.

14. There is an another facet to the matter i.e. in case, if the respondent's stand of their intention to file a 'B' summary is appreciated, the petitioners have every right to lodge a protest petition in the 'B' summary proceedings, as such protest petition if so lodged by the petitioners, can be decided on its merits without being influenced by the findings recorded hereinabove.

15. An assurance is given by the Additional Public Prosecutor Mr. Pathan that, the respondent Investigating Officer shall submit the response before the Backward Class Commission within a reasonable period and the same is also taken on record.

16. That being so, by reserving the right of the petitioner to lodge objection in 'B' summary proceedings, we see no reason to cause interference in extra ordinary jurisdiction, the petition, as such, stands dismissed.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)