



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.34 OF 2025

Nandu Kailash Shinde

.. Petitioner

Versus

1. The State of Maharashtra
Through Principal Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Directorate General of Police,
Chh. Sambhajinagar,
Tq. and Dist. Chh. Sambhajinagar.
3. The Superintendent of Police,
Chh. Sambhajinagar (Rural),
Tq. And Dist. Chh. Sambhajinagar.
4. The Investigating Officer,
Kannad Police Station,
Tq. Kannad, Dist. Chh. Sambhajinagar.

.. Respondents

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Mr. Ravindra V. Gore, Advocate for the petitioner.
Mr. A. M. Phule for the respondents/State.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 27 JANUARY 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India to direct the respondent No.4 to register the FIR under Section 101 of Bhartiya Nyaya Sanhita, 2023 against the accused persons in connection with complaint dated 02.11.2024 (Exhibit-A) and to undertake the further thorough investigation by effecting arrest of accused person.

2. Heard learned Advocate for the petitioner. Learned Advocate for the petitioner submits that the petitioner is an agriculturist. Deceased Rajesh @ Om Shinde was the nephew of the petitioner. Father of the deceased is no more and his mother got remarried and is not residing with deceased Rajesh since last 10 years. Deceased Rajesh was student of 12th standard in college at Chapaner, Tq. Kannad. On 27.10.2024, deceased Rajesh has received call from Aniket More and Durgesh Mahajan. After the said call, deceased Rajesh went there. Since 9.30 p.m. on 27.10.2024 deceased Rajesh was with Aniket and Durgesh. On that day, deceased Rajesh did not come back to home. On the next day morning around 7.00 a.m., deceased Rajesh was found near house of Yogesh Lokhande. Thereafter, the petitioner has

taken deceased Rajesh to home. At that time, he disclosed that he was assaulted by his friends in the night. Thereafter, the petitioner has taken him to Jadhav Hospital, Kannad for treatment. The said hospital referred him to Rural Hospital, at Kannad. He was immediately taken to the Government Hospital, Kannad, however, he was died around 3.00 p.m. on 28.10.2024. After his death, postmortem was conducted in the hospital. Thereafter, immediately the petitioner went to Kannad Police Station for lodging the report, but the same was not accepted. Thereafter, around 9.30 p.m. on 28.10.2024 funeral was taken place. He further submits that on the next day the petitioner again went to Kannad Police Station for registration of the FIR but again the concerned police station has refused to register the FIR. In the meantime, the petitioner has inquired about the incident and he came to know that in the CCTV footage of Seva Hotel, Bypass, Kannad deceased Rajesh and Aniket and Durgesh were found near two wheeler. Thereafter, they left that place on motorcycle. The concerned owner of the hotel told that deceased Rajesh and Aniket and Durgesh left that place together in the night. Thereafter, deceased Rajesh was assaulted by Aniket and Durgesh. Even mobile of deceased Rajesh was misplaced on the

same day. Thereafter, the petitioner has filed complaint dated 02.11.2024 before respondent Nos.3 and 4, wherein he narrated the aforesaid facts in detail and thereby stated that serious offence has been committed, but the concerned police station is not investigating the case and thereby helping the accused to disappear the evidence. Being aggrieved by the inaction on the part of the Police Authorities, the petitioner has filed present writ petition.

3. Here, when the petitioner seeks registration of the FIR and the investigation thereof, then we are guided by the decisions in ***Sakiri Vasu Vs. State of U.P. and Ors.*, [(2008) 2 SCC 409]**, ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Ors.*, [(2016) 6 SCC 277]** and ***T.C. Thangaraj Vs. V. Engammal and Ors.*, [(2011) 12 SCC 328]**, which have been then referred in ***M. Subramaniam and Ors. Vs. S. Janaki and Ors.*, [(2020) 16 SCC 728]**, wherein the Hon'ble Supreme Court has held that the petitioner/complainant will have to approach Magistrate under Section 156(3) of the Code of Criminal Procedure and the High Courts should not entertain such petitions under Section 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India.

4. In view of the said legal position, the writ petition stands disposed of with liberty to the petitioner to approach the Magistrate as provided under the law.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm