

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

CRIMINAL WRIT PETITION NO. 6469 OF 2024

Amar Divakar Mishra

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Ghanshyam Upadhyay a/w. Vijay Jha i/b. Law Juris for
Petitioner.

Ms. Supriya Kak, APP for State/Respondent.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**

DATE : 16 APRIL 2026

PC :

1. This is a petition praying for transfer of the investigation to the Central Bureau of Investigation (CBI) and/or State CID in respect of the C.R.No.147 of 2023 registered at Kashimira police station, District Thane.

2. Heard Mr. Ghanshyam Upadhyay, learned counsel for the Petitioner and Ms. Supriya Kak, learned APP for the State.

3. The said F.I.R. was lodged on 27.02.2023 at 6.09p.m. at Kashimira police station, under sections 3 and 4 of the Dowry

Prohibition Act, 1961 and U/s. 304(B), 306, 420, 406, 313, 323, 498A and 504 r/w. 34 of the IPC.

4. In this case, the Investigating Agency i.e. Kashmirira police station has already filed the charge-sheet. However, learned counsel for the Petitioner relied on the Judgment of the Hon'ble Supreme Court in the case of Dharam Pal Versus State of Haryana and others¹ to contend that the Hon'ble Supreme Court had observed that the investigation can be transferred even after the trial has commenced in a given case. We have perused that Judgment. The relevant observations are in paragraph Nos.24 and 25; which are as under:-

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing

1 (2016) 4 Supreme Court Cases 160

factor.

25. We may further elucidate. The power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic setup has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that Sun rises and Sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a Court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the 'faith' in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a Constitutional Court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "id'ee fixe" but in our view the imperium of the Constitutional Courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like

playing possum. As has been stated earlier facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbor the feeling that he is an “orphan under law”.”

5. In this backdrop, we have considered whether a case is made out for transfer of the investigation to CBI.

6. The brief facts leading to filing of this petition are as follows:

(i) The Petitioner is the father of one Asmita who died under suspicious circumstances on 24.02.2023. She had got married with one of the accused Abhay Mishra on 20.11.2021. As per their custom, she stayed with her parents till *Gauna* ceremony was performed on 12.05.2022. The Petitioner and Asmita's parental house was at Malad, whereas, her matrimonial house i.e. the house of the accused was in Miraroad. She started residing with her in-laws in her matrimonial house since 12.05.2022. The incident occurred within less than a year i.e. on 24.02.2023. Certain allegations are made in the F.I.R. However, learned counsel for the Petitioner submitted that the police were reluctant to register the offence of murder against the accused.

(ii) It is the case of the Petitioner that, Asmita was continuously harassed for dowry and for various other reasons. She was continuously assaulted. On one occasion she was forced to suffer miscarriage, and ultimately she was murdered by strangulation.

(iii) The F.I.R. gives some more details about these allegations. The F.I.R. mentions that various ornaments and cash was given to the accused. Asmita's husband, his parents, brother and sisters were residing in Asmita's matrimonial house. Her husband was insisting that the Petitioner should give one flat for the Accused's family. Asmita's ornaments were kept deceitfully by the accused. She was working as a trainee in a company. Her salary was forcefully taken by her husband. He used to continuously beat her and abuse her. He was addicted to liquor. The petitioner used to send money in Asmita's account to help her.

(iv) The F.I.R. thereafter goes on to mention various allegations including an incident when she was forced to suffer miscarriage by consuming medicine. On 22.02.2023 Asmita

telephonically informed the Petitioner that her husband was assaulting and abusing her and was asking for divorce. At that time, the Petitioner had tried to pacify her.

(v) On 23.02.2023, the Petitioner and his wife met Asmita near her building. Even at that time, she looked tense. On 24.02.2023, at about 9:30p.m. Asmita's husband called the Petitioner and informed him that Asmita had hanged herself and she was taken to Wockhardt hospital. The Petitioner went there and they came to know that she was dead. The Petitioner saw her dead body and found that there were injuries on the dead body. It is the case of the Petitioner that, immediately, the petitioner went to Kashimira police station at about 10:45p.m. on 24.02.2023 and he waited till 2:45a.m., but the police refused to take the F.I.R. They insisted that they would register only Accidental Death Report (for short 'ADR') and after postmortem examination they would take further call on the issue of registration of F.I.R.

(vi) Shri. Upadhyay submitted that, only after the Petitioner approached his community through a social networking site, and

after protest was lodged against the police officers, finally the F.I.R. was registered on 27.02.2023. Even on that occasion, it was not registered for commission of offence punishable U/s.302 of the IPC. The investigation was carried out only in one direction. It was not a fair investigation and, therefore, he had to approach this Court.

7. Shri. Upadhyay submitted that the husband was absconding. Other accused were arrested and were released on regular bail. The husband was granted anticipatory bail. Shri. Upadhyay invited our attention to the various statements in the charge-sheet. He contended that the charge-sheet itself shows some serious discrepancies. Those would indicate that the investigation was biased in favour of the accused and it was not carried out with due seriousness. He invited our attention to the discrepancy in the timing of the inquest panchanama and the time when the dead body was taken over to other hospital. He relied on the photograph of the spot which showed that an *odhani* was already hanging from the ceiling fan, but the spot panchanama showed that it was on the bed. He also relied on the statement of

the Medical Officer who had conducted the postmortem examination. She had, in turn, admitted that, because of her lack of deep knowledge, she could not opine whether it was a case of strangulation or of hanging. Learned counsel submitted that there has been failure to investigate properly at every stage. He, therefore, insisted on transferring the investigation to CBI.

8. On the previous occasion, we had noted three major discrepancies in the investigation in respect of the timing of the inquest panchanama, the photograph showing an *odhani* attached to the ceiling fan and the opinion of the senior doctors. We had specifically asked the learned APP to file an Affidavit explaining these three major facts along with other discrepancies. Accordingly, the Affidavit is filed.

9. Learned APP submitted that the investigation was conducted properly and all the necessary steps were taken. She relied on the Affidavit filed by the Investigating Officer to contend that the investigation was proper. However, on instructions, she made a statement that the investigation could be transferred to

DCB Crime.

10. Learned counsel for the Petitioner submitted that the said investigating agency would fall within the same Commissionerate area and, therefore, he opposed to transfer the investigation to said investigating agency and insisted that the Court may consider transferring it to CBI.

11. In this background, we have examined the material before us.

12. As can be seen from the record, the F.I.R. is not registered immediately on 25.02.2023, though the incident had occurred in the night of 24.02.2023 and the Petitioner had approached the police for registration of F.I.R. immediately. The F.I.R. is not registered U/s.302 of the IPC. In this background, the statement of the Medical Officer who conducted the postmortem examination is significant. A letter written by the said Medical Officer dated 14.10.2024 is at page No.165 of this petition. She was attached to Pandit Bhimsen Joshi General Hospital, Mira Bhayandar. She had conducted the postmortem examination on

25.02.2023. She has stated in the said letter that, while conducting the postmortem examination she made notes based on her primary gross knowledge. She further stated that, since she was not an expert in forensic science, she was not in a position to opine whether the death was due to suicide or was a result of murder. She had requested the investigating agency to carry out further process through the forensic department of Sir JJ Hospital.

This letter itself is very clear mentioning that the Medical Officer was not in a position to give a reasonably firm opinion whether it was a case of suicide or murder. The postmortem notes mention the opinion as follows:

“Death is due to asphyxia however viscera is preserved for chemical analysis & histopathological examination for final cause of death.”

After receipt of the histopathology report, the same Medical Officer opined that it was death due to hanging. This itself, in the backdrop of her letter dated 14.10.2024, indicates that she had no definite reason to give an opinion that it was a case of hanging and not of strangulation.

13. The same Medical Officer had addressed another letter dated 03.05.2023 to the Civil Surgeon, District Thane, wherein she had stated that, before starting the postmortem examination she had asked the police officer whether it should be 'in-camera' postmortem. But at that time, the police had answered in the negative. They had said that it was not necessary. Similarly, the police had not given any instructions to record the postmortem through video recording. Police had not made two medical officers available. Thus, the postmortem examination was not conducted with the seriousness that it deserved. Previous Division Bench had asked to get a report of the expert doctors. Accordingly, the report was prepared. It was signed by the team of the doctors mentioning that, according to them, the deceased had died due to asphyxia due to hanging. The manner of death was suicidal in nature. This report was signed by two Assistant Professors and one Associate Professor of Sir JJ Hospital. Shri. Upadhyay submitted that they were not experts or senior doctors. We find that, their opinion is based on the postmortem examination which itself was not conducted by a Doctor who was well-versed with the forensic

science.

14. The other main grievance of the Petitioner, as submitted by Shri. Upadhyay was that, the record shows that the dead body was received by Pandit Bhimsen Joshi General Hospital at 3:00a.m. and the inquest panchanama was supposedly carried out at Wockhardt Hospital. The timing mentioned on the inquest panchanama is 5:00a.m. to 5:45a.m. He submitted that, by that time, the dead body was already taken to Pandit Bhimsen Joshi General Hospital. Therefore, obviously, the timing on the inquest panchanama was manipulated. The Affidavit of the I.O. shows that the inquest panchanama, in fact, was drawn at around 1:00a.m. to 2:00a.m. on 25.02.2023. But by that time, the ADR was not registered. The ADR was registered at 3:36a.m. on 25.02.2023 and it was uploaded a little later because the system was operating at a slow speed. Only after the ADR was registered, the timing in the inquest panchanama was mentioned as 5:00a.m. to 5:45a.m. at Wockhardt Hospital, though the panchanama was conducted much earlier. This explanation is hardly acceptable at this stage, because the inquest panchanama should have correctly recorded the exact

time during which it was conducted. This difference in timing, at this stage, raises reasonable apprehension in the mind of the Petitioner.

15. The other important aspect is about the photograph at Exhibit-K which shows that the *odhani* in question was hanging from the ceiling fan. However, the spot panchanama which was conducted between 4:00a.m. to 5:00a.m. on 25.02.2023 shows that the *odhani* was on the bed. This is another important discrepancy. Shri. Upadhyay further rightly submitted that, if it was a case of the accused that they broke opened the door of the room to enter the room to take Asmita down from her hanging position, then the spot panchanama ought to have indicated the broken door. But the spot panchanama does not show any such damage to the door. This also raises suspicion about the genuineness of the spot panchanama.

16. All these discrepancies are undoubtedly significant in the background of the facts narrated above and, therefore, we agree with the submissions of the learned counsel for the Petitioner that

this is a case wherein the investigation is required to be transferred to CBI for fair and effective investigation. Therefore, we are satisfied that the Petitioner has made out a case for grant of relief in this petition.

17. Hence, the following order:

O R D E R

- i) The investigation in respect of the C.R.No.147 of 2023 registered at Kashmirira police station, under sections 3 and 4 of the Dowry Prohibition Act, 1961 and U/s. 304(B), 306, 420, 406, 313, 323, 498A and 504 r/w. 34 of the IPC. is directed to be transferred to the Central Bureau of Investigation (CBI).
- ii) The investigating agency shall handover all the necessary papers to the CBI.
- iii) The investigation shall be carried out with efficiency, and if necessary supplementary charge-sheet be filed before the appropriate Court.
- iv) The CBI is at liberty to record the supplementary statement of the Petitioner.

- v) It is made clear that the CBI shall investigate the crime in accordance with law without being influenced by the earlier investigation.
- vi) The observations made in this order are only for the purpose of deciding this petition.
- vii) The petition is disposed of.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)