

(2022) 12 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 230 Of 2022

Pooja

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 306

Citation : (2022) 12 BOM CK 0013

Hon'ble Judges : Sunil B. Shukre, J;M. W. Chandwani, J

Bench : Division Bench

Advocate : R.S. Nayak, M.J. Khan

Final Decision : Dismissed

Judgement

Sunil B. Shukre, J

1. Heard. Rule. Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. Heard learned counsel for the petitioner and learned A.P.P. for respondent Nos.1, 2 and 4. None appears for respondent No.3 - Central Bureau of Investigation though duly served.

3. By this petition, the petitioner is seeking issuance of mandamus for transferring of Crime No.166/2022 registered by Police Station Wadi, Nagpur for an offence punishable under Section 306 of the Indian Penal Code against boyfriend of deceased daughter of the petitioner. According to learned counsel for the petitioner there is enough material for this Court to come to the conclusion that the investigation carried out by Wadi Police Station is done in a pathetic, indifferent and even negligent manner and if it was done effectively, the possibility of discovering truth about the circumstances in which deceased Pooja died in an open place situated at some 70 meters from the main gate of

Unconventional Operations Training Centre, Surabardi, a center which imparts training to police personnel in unconventional operations, would have been there.

4. Mr. Nayak, learned counsel for the petitioner submits that there are sufficient suspicious circumstances which have not been probed into by the Investigating Officer and, therefore, a doubt arises about the credibility of the investigation carried out. He invites our attention to the rejoinder affidavit filed by the petitioner, mother of the deceased, wherein he has pointed out certain suspicious circumstances.

5. Mr. Khan, learned A.P.P. for respondent Nos.1, 2 and 4 submits that all these circumstances which have been called by the petitioner to be suspicious have been properly enquired into and the doubt arising therefrom has been cleared by the Investigating Officer which sufficiently points out at this stage that prima facie nature of death of the deceased daughter of the petitioner was suicidal. In support, he has taken us through reply of the State and also various documents filed on record of this petition.

6. Doubt has been expressed regarding existence of third mobile number having IMEI 866206054490710. Similarly, it is submitted that when the dead body of the girl was discovered for the first time in the evening of 16.3.2022 how is it possible that the call details record would show tower location of the IMEI No.866206054490710 at different places even after 6 p.m. of 16.3.2022.

7. In this regard, our attention has been brought to the letter issued by the office of the airtel which, on perusal, in our opinion, clears lot many doubts. The explanation is to the effect that even if any mobile phone is switched off its location would be registered in the concerned mobile tower the moment any person makes a call on that mobile or sends a message to that mobile. This explanation, in our view, would dispel any doubt entertained by the petitioner in this regard.

8. As regards the contention, there exists some other mobile hand set having IMEI No.866206054490710, there is an explanation given in this regard by the concerned office of the airtel when it says that the last digit of IMEI is called the check digit and the check digit as per the procedure is not transmitted to the network. This letter further explains that check digit is a function of all other digits in the IMEI and this check digit, as per the procedure shall always to be transmitted to the network as "0". The explanation further says that this is the reason that IMEI 866206054490715 has been shown as IMEI 866206054490710 in call details record. This would, prima facie, show at this stage, that there is no material to come to a conclusion even in a prima facie manner that there existed a third mobile handset having IMEI No.866206054490710.

9. It is further contended that from the bag of the deceased, which was seized from the spot of incident, several articles were found and one of the articles found was a visiting card, which was seized along with other articles and that this visiting card was found to be bearing human blood stains as per the report of

Chemical Analyzer. It is submitted that effort was made by the police to solve the mystery behind the human blood stains. Mr. Khan, learned A.P.P. submits that full-fledged efforts were made for finding out as to whose human blood was it and if the efforts were successful, the Investigating Officer would have proceeded further in the direction given by the finding regarding the blood group of the said blood stains but, the efforts were not successful. He places his reliance upon the letter of Chemical Analyzer dated 17.10.2022.

10. After going through the letter dated 17.10.2022, we find that the Investigating Officer had tried to obtain DNA profiling of the said blood stains but could not, as the blood stains were in minuscule quality because of which no amplifiable DNA could be obtained from it. This would only show that the Investigating Officer could not be blamed for not making any efforts in effectively investigating this case, in so far as his efforts for finding out blood group and other details of the visiting card having blood stains are concerned.

11. There are also other circumstances pointed out by learned counsel for the petitioner which, in his opinion, create a doubt about the suicidal death of the daughter of petitioner. They are like deceased choosing to commit suicide in the outskirts of city, the upper body of the deceased not being affected so much due to burn injuries, most of the clothes especially undergarments being missing and the newspaper reports initially indicating that the death of the daughter of petitioner might have been homicidal.

12. All these circumstances though appear to be suspicious in nature, in our opinion, have prima facie lost their such character when the other evidence has been collected by the Investigating Officer which prima facie shows that there was a strong possibility of the deceased having committed suicide. The Investigating Officer has found evidence showing that the deceased was not in a proper state of mind before her death, that she was feeling very much harassed and perturbed at the hands of her boyfriend, that the deceased was contemplating commission of suicide, that the deceased had discussed the issue with one of her friends and showed her inclination to commit suicide, that the deceased had visited certain websites providing guidance for commission of suicide, the deceased had made request to her other friend to buy kerosene oil for the use of her some aunt, which request was responded by her friend by saying that kerosene was no longer available in open market but diesel was and thereupon the deceased had made a request to that friend to procure one liter of diesel which request was met by the friend of the deceased and so on.

13. All these circumstances, in our prima facie view, indicate that as of now there is no material available on record from which it could be said that the Investigating Officer did not make any effective investigation to solve the mystery behind the death of daughter of the petitioner in suspicious circumstances and that the investigation was done in shoddy, negligent and pathetic manner. Of course, it is not the case of the petitioner that investigation has been done under the influence of somebody so as to screen the real

offenders from prosecution. The only case of the petitioner is that something more ought to have been done by the Investigating Officer, sufficient to lead the petitioner to conviction of her mind that the prima facie conclusion drawn by the Investigating Officer about suicidal death of her daughter while filing chargesheet suffers from no apparent infirmity or absurdity. This conviction can be entertained by any dispassionate discerner here but, it seems, not the petitioner. The petitioner, a distressed mother, is spending restless time pondering over as to how her daughter could have met untimely death in suspicious circumstances. But, we are of the view that this is only the anxiety of a concerned mother which prima facie has made her refuse to believe in the efficacy of investigation carried out by the Investigating Officer. We hope, with this judgment, she would find some satisfaction. At the cost of repetition, we would say here that the Officer has left no stone unturned in this case and has done his best which was possible for him to do in the matter.

14. Thus, we are of the considered opinion that this is not an exceptional case where extraordinary powers of this Court under Article 226 of the Constitution of India should be exercised for transferring the investigation to some other agency including the Central Bureau of Investigation. The well settled parameters set out in the cases of K.V. Rajendran V/s Superintendent of Police, CBCID South Zone, Chennai and others reported in (2013) 12 SCC 480, Dharam Pal V/s. State of Haryana and others reported in (2016) 4 SCC 160 and Arnab Monoranjan Goswami V/s. State of Maharashtra and others reported in AIR 2021 SC 1 are not present in this case, the reasons for which are already discussed in the earlier paragraphs. Therefore, we are not inclined to allow this petition. The petition stands dismissed.

Rule is discharged.

CRIMINAL APPLICATION (APPW) NO.193/2022.

15. In view of above order, this application does not survive and is disposed of as such.