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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1565 OF 2015

1) Ms. Smita Pansare
Age 47 years currently R/at: Plot No.
17, Ideal Society, Sagar Mal Shastri
Nagar, Kolhapur.

2) Dr. Megha Pansare,
Age 49 years R/at: Plot No. 17, Ideal
Society, Sagar Mal Shastri Nagar,
Kolhapur.

.....Petitioners.

Vs.

State Of Maharashtra, through
the Additional Chief Secretary (Home),
Mantralaya, Mumbai 400 032.

.....Respondent

WITH

CRIMINAL APPLICATION (APPW) NO.43 OF 2017

Ms. Smita Pansare & Anr.

.....Applicants.

Vs.

State Of Maharashtra.

.....Respondent

WITH

INTERIM APPLICATION NO.725 OF 2019

Dr. Megha Pansare,
Aged 53 years, r/o. Plot No.17,
Ideal Society, Sagar Mal,
Shastri Nagar,
Kolhapur.

....Applicant

In the matter between:-

Smita Pansare & Ors.

.....Petitioners.

Vs.

State Of Maharashtra

.....Respondent

WITH

INTERIM APPLICATION NO.2645 OF 2022

Sharad Bhausahab Kalaskar,
Age 29 year old,
Presently lodged at
Central Jail, Yerwada, Pune.

....Applicant/Intervenor

In the matter between:-

1) Smita Pansare
R/o Plot No.17, Ideal Society,
Pratibhanagar, Kolhapur-416008.

2) Medha Pansare,
R/o. Plot No. 17, Ideal Society,
Pratibhanagar, Kolhapur-416008.

.....Petitioners.

Vs.

State Of Maharashtra,
through the office of Govt.
Pleader.

.....Respondent

WITH

INTERIM APPLICATION NO.2647 OF 2022

Sharad Bhausahab Kalaskar,
permanently residing at Kesapuri,
Tal- Daulatabad, Dist. Aurangabad
and at present lodged in Yerawada
Central Prison, Pune.

....Applicant/Intervenor

In the matter between:-

1) Smita Pansare
R/o Plot No.17, Ideal Society,
Pratibhanagar, Kolhapur-416008.

2) Medha Pansare,
R/o. Plot No. 17, Ideal Society,
Pratibhanagar, Kolhapur-416008.

.....Petitioners.

Vs.

State Of Maharashtra,
represented by Govt.
Pleader.

.....Respondent

WITH

INTERIM APPLICATION NO. 1810 OF 2024

Dr. Virendrasingh S. Tawade,
presently lodged in Anda Cell,
Yerawada Jail, Pune-411 006.

....Applicant/Intervenor

In the matter between:-

1) Ms. Smita Pansare
Age 47 years r/o Plot No.17
Ideal Society, Sagar Mal
Shastri Nagar, Kolhapur.

2) Smt. Medha Pansare,
Age 49 years r/o. Plot No. 17,
Ideal Society, Sagar Mal,
Shastri Nagar, Kolhapur.

.....Petitioners.

Vs.

State Of Maharashtra,
through the Additional Chief
Secretary (Home), Mantralaya,
Mumbai.

.....Respondent

Mr. Anand Grover, Senior Advocate (Through VC) a/w Mr. Amit Singh, Mr. Kabeer Pansare, Ms. Anasamah Sayed and Mr. Tanuj Kushare i/b Abhay Nevagi & Associates for Petitioners.

Mr. Subhash Jha a/w Mr. Siddharth Jha, Ms. Apeksha Sharma, Mr. Sumeet Upadhyay and Mr. Ashish Saxena i/b Law Global Advocates for the Applicant in IA No.1810 of 2024.

Mr. Ashok Mundargi, Special P.P. a/w Smt. M.M. Deshmukh, Addl. P.P. for the Respondent-State.

Mr. Meena Jayant, IPS, IO-ATS present.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.

RESERVED ON : 16th DECEMBER, 2024
PRONOUNCED ON : 2nd JANUARY, 2025.

JUDGMENT (PER A.S. GADKARI, J.):

1) Petitioners i.e. the daughter and daughter-in-law of late Comrade Govindrao P. Pansare have invoked jurisdiction of this Court under Article 226 of the Constitution of India, for a Writ of Mandamus or any other Writ, Order or direction in the nature of mandamus, directing the Respondent No.1 for appointing an independent Special Investigation Team (SIT) led by the Additional Director General of Police and comprising of Officers of the ranks of Inspector General of Police and other Senior Officers of impeccable credentials to conduct an investigation into the conspiracy

and gruesome murder of Shri. Govind Pansare, and to take all necessary consequential steps, actions pertaining thereto and provide them necessary facilities and support and to monitor the investigation to be carried out by the SIT sought to be constituted through the present Petition till the investigation is reached to its logical conclusion.

2) Heard Mr. Grover, learned senior counsel for the Petitioners. Mr. Mundargi, learned senior counsel, Spl. PP for the State and Mr. Jha, learned counsel for the accused Mr. Tawade. Perused entire record and the Notes of Arguments tendered across the bar by the Advocate for the Petitioners.

3) Record indicates that, Shri. Govind P. Pansare and his wife Smt. Uma G. Pansare were shot at by two unknown assailants riding on a motor-cycle, on a public road near the house of Shri. Pansare, at about 9.15 a.m. on 16th February, 2015. Initially a crime bearing No.39 of 2015 under Sections 307 r/w 34 of the Indian Penal Code and under Section 3(25) of the Arms Act was registered with Rajarampuri Police Station, Kolhapur at the instance of Shri. Mukund D. Kadam. Injured Mr. Govindrao Pansare succumbed to injuries on 20th February, 2015 while undergoing treatment at Breach Candy Hospital, Mumbai and therefore Section 302 of the IPC is added to the crime.

3.1) Initially Rajarampuri Police Station, Kolhapur investigated the crime and thereafter the investigation was transferred to Special

Investigation Team (SIT), Kolhapur. That, under the supervision of Additional Director General of Police (CID), Maharashtra State, Pune, the investigation was conducted by the said SIT. During the course of investigation names of 12 accused were revealed. The SIT arrested 10 accused persons and two accused namely Vinay B. Pawar and Sarang D. Akolkar @ Kulkarni were reported to be absconding. That, initially a charge-sheet was filed against the accused No.1, Sameer Gaikwad on 14th December, 2015 and subsequently, 4 supplementary charge-sheets have been filed against the said 10 accused persons.

4) As the petitioners were of the view that, there was no major headway in the investigation of the said crime, they filed Interim Application No.2361 of 2022, for handing over the investigation of the present crime to a dedicated team of ATS, Maharashtra. It was the contention of the Petitioners that, the SIT failed to trace out the absconding accused persons who were the actual shooters and there was no major headway in the said investigation. This Court by a detailed Order dated 3rd August, 2022 passed in Interim Application No.2361 of 2022, directed the Additional Director General of Police, ATS to constitute a team of ATS Officers on similar manner, as constituted earlier and the said team to include some of the Officers of SIT who have been investigating the said case and are in the know-how of the investigation carried out, till the date of passing of the said Order.

4.1) Paragraph Nos.39 and 41 of the said Order are reproduced hereinbelow for the sake of brevity.

“39. No doubt, SIT has taken steps, however, we do not find any major headway being made in the said investigation. Despite the efforts of the Officers of SIT, there is no breakthrough. This Court in the aforesaid petition has been monitoring the investigation since 2016. SIT has been regularly submitting reports with respect to steps taken to nab the shooters. However, till date, they are absconding. The wait for the family of Comrade Pansare has been long, for almost seven years. There is a legitimate expectation not only for the family of Comrade Pansare, but also the public at large, to see that the perpetrators of the ghastly crime, are brought to book. And, this is the responsibility of the investigating machinery, which exists to preserve law and order. In the present case, SIT and ATS, both are part of the Maharashtra Police. The transfer of investigation, even according to Mr. Nevagi, learned counsel for the applicants and Mr. Mundargi, Special PP, will not impede the ongoing trial. We are of the opinion, that transfer is necessiated to ATS to enable them to look at the

investigation from their angle, as enough and more than sufficient time was given to SIT by this Court. It is necessary that investigation is taken to its logical end, failing which, the perpetrators of the crime would be emboldened.”

“41. Accordingly, the Additional Director General of Police, ATS, to constitute a team of ATS Officers on similar lines, as constituted earlier, by SIT. The said team to include some of the officers of SIT, who have been investigating the said case and are in the know-how of the investigation carried out, till date. The constitution of the team shall be done at the earliest, and in any event, within one week from the date of uploading of this order.”

5) Accordingly, the concerned Authority has constituted a team of officers of ATS which is being headed by Mr. Jayant Meena, IPS, Superintendent of Police, ATS. After transfer of the said case to the ATS, it was renumbered as C.R. No.17 of 2022 on 19th August, 2022 under Sections 120(B), 302, 307 r/w 34 of the IPC and under Sections 3, 25 and 27 of the Arms Act and further investigation was commenced. The said team headed by the S.P. of ATS has carried out investigation on all relevant and material aspects. Record further reveals that, on 28th June, 2024 Petitioners along

with their Advocate Mr. Kabir Pansare appeared at the office of the S.P., ATS, Pune and submitted a written representation. The contentions raised and allegations made therein by the Petitioners have been duly verified and investigated by the ATS.

6) Mr. Grover, learned senior counsel for the Petitioners submitted that, the monitoring of investigation of the present crime, being conducted by ATS, by this Court, is necessary for arrest of the said two absconding accused persons. He submitted that, from the perusal of various earlier Orders passed by this Court, it can be inferred that, earlier there was little progress in the investigation and after the investigation was transferred to ATS, it was properly conducted and the masterminds of the crime are identified. That, earlier the process of the investigation was tardy and only after monitoring of investigation by this Court, extra-ordinary efforts were taken by the investigating agency. Therefore this is a case of extra-ordinary nature and monitoring of investigation needs to be continued. He submitted that, there is a common link between the four murder cases namely of, Dr. Narendra Dabholkar, Comrade Govind Pansare (present case), Professor M.M. Kalburgi and Ms. Gauri Lankesh and according to the Petitioners, all the cases were coordinated and organized by same mastermind. That, the investigation in that aspect is yet to be carried out and therefore the monitoring of investigation of the present crime is necessary. Mr. Grover, drew our attention to the observations made in

paragraph Nos.75 and 108 of the Judgment dated 10th May, 2024 passed in Sessions Case No.706 of 2016 by the learned Additional Sessions Judge, Pune. The said case was pertaining to the murder of Dr. Narendra Dabholkar. He submitted that, it is observed in paragraph No.108 that, the prosecution has failed to unmask the mastermind in the said case. He submitted that, therefore also monitoring the investigation in the present case is necessary. He therefore prayed that, the monitoring of the investigation of the present crime being conducted by the ATS may be continued by keeping the Petition pending.

7) Mr. Mundargi, learned senior counsel, Special PP, on instructions from the S.P of ATS informed this Court that, all the allegations made by the Petitioners as per their statements and/or their representations given to the ATS have been in detailed investigated. That, apart from tracing out two absconding accused, the investigation of the present crime has been completed from all the angles.

7.1) He tendered across the bar a report dated 14th November, 2024 duly signed by the S.P of ATS, Pune in a sealed envelop. We have perused the said report. Perusal of report indicates that, the concerned investigating agency has thoroughly investigated present crime from all the angles and as per the said investigating report two accused namely Vinay B. Pawar and Sarang D. Akolkar @ Kulkarni are still absconding.

7.2) Mr. Mundargi, on instructions submitted that, the investigating

agency would continue its efforts in tracing out and arresting the said two absconding accused namely Vinay B. Pawar and Sarang D. Akolkar @ Kulkarni. He respectfully requested this Court, to pass necessary Orders in the interest of justice.

8) Perusal of record and the confidential report submitted by the Investigating Officer, i.e. the S.P. ATS, indicates that, the ATS has investigated from all the angles the allegations made by the Petitioners in their representation/statements and except the arrest of said two absconding accused, nothing further remains to be investigated. The investigating agency is making necessary efforts to arrest the said absconding accused by carrying out further investigation as contemplated under Section 173(8) of Cr.P.C.. It is thus clear that, the only aspect remained to be investigated is, tracing of the said two absconding accused. According to us, only for the purpose of arrest of absconding accused, continuous monitoring of the further investigation by this Court under Article 226 of the Constitution of India is not necessary. After the accused persons are arrested, the investigating agency can report it to the trial Court as per the provisions of Cr.P.C.

8.1) Record further reveals that, the trial of the present case has already commenced and as on 16th December, 2024, the prosecution has examined 28 witnesses.

8.2) Mr. Mundargi, learned senior counsel, Special PP, appearing

for the State drew our attention to the fact that, the trial of the present case could not be completed till date as the trial Court is listing the trial for hearing once in 15 days. That, the accused herein are being represented by various Advocates and to accommodate them as per their convenience, on a particular date the trial Court is listing the Sessions Case No.3 of 2016 pending on the file of Additional Sessions Judge, Kolhapur once in a fortnight and it is for that reason, till the date the trial of the present crime could not be concluded.

9) At this stage, a useful reference can be made to few decisions of the Hon'ble Supreme Court which have elucidated the principles regarding monitoring of investigation by the Court.

9.1) In the case of *Vineet Narain & Ors. Vs. Union of India & Anr., reported in (1998) 1 SCC 226*, the Hon'ble Supreme Court has laid down the ratio that, the task of the monitoring by Court would end, the moment a charge-sheet is filed in respect of a particular investigation and that the ordinary process of the law would then take over.

9.2) The Hon'ble Supreme Court in the case of *Sushila Devi Vs. State of Rajasthan & Ors., reported in (2014) 1 SCC 269*, in paragraph No.28 thereof, has held as under:-

“28. After analysing all these decisions, it appears to us that this Court has already in a catena of decisions held and pointed out that the monitoring of a case is continued till

the investigation continues but when the investigating agency, which is appointed by the court, completes the investigation, files a charge-sheet and takes steps in the matter in accordance with the provisions of law before a competent court of law, it would not be proper for this Court to keep on monitoring the trial which is continuing before a competent court. Accordingly, we are of the opinion that since the investigation has already been completed, charge-sheet has been filed, trial has already commenced, it is not necessary for this Court to continue with the monitoring of the case in question.”

9.3) The Hon’ble Supreme Court in the case of *Shahid Balwa Vs. Union of India & Ors.*, reported in (2014) 2 SCC 687, has observed that, it has taken the consistent view that once charge-sheet is submitted in the proper Court, the process of court-monitoring investigation comes to an end and it is for that Court to take cognizance of the same and deal with the matter.

10) After taking into consideration the ratio enunciated by the Hon’ble Supreme Court in the aforesaid decisions and applying it to the facts of the present case, this Court is of the considered opinion that, further monitoring of the investigation of the present crime is not necessary.

11) In view of the fact stated by the learned Spl.PP. and recorded in paragraph No.8.2 above, we direct the learned Judge of the trial Court to expedite the hearing of the Sessions Case No.3 of 2016 and to conduct it on daily basis.

12) Petition is accordingly disposed off in the aforesaid terms.

13) In view of disposal of Writ Petition, Criminal Application (APPW) No.43 of 2017, Interim Application Nos.725 of 2019, 2645 of 2022, 2647 of 2022 and 1810 of 2024 do not survive and are also disposed off.

(KAMAL KHATA J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
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MASHALKAR
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