



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.457 OF 2025

Smt. Vijayabai Vyankat Suryawanshi
Age: 61 years, Occu.: Housewife,
Address: Ramling, Mrudud Ramling,
Tq. Nilanga, District Latur.

.. Petitioner

Versus

1. The State of Maharashtra
Through Chief Secretary,
Home Department, Mantralaya,
Mumbai – 400 021..
2. The Director General of Police,
Maharashtra State Police Head Quarter,
Old Council Hall, Shahid Bhagatsingh
Marg, Mumbai – 400 001
3. The Investigation Officer, CID,
Parbhani.

.. Respondents

...
Mr. Prakash Ambedkar, Advocate i/b Mr. M. B. Sandanshiv, Advocate for the
petitioner.
Mr. A. B. Girase, Public Prosecutor for the respondents/State.
...

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

**RESERVED ON : 09 JUNE 2025
PRONOUNCED ON : 04 JULY 2025**

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

. While invoking the powers under Article 226 of Constitution of
India, the petitioner prays for the directions to lodge First Information
Report under Section 103 and other appropriate Sections of Bhartiya

Nyaya Sanhita, 2023 along with Sections of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “Atrocities Act”) against the police officers responsible for the custodial death of the son of the petitioner. The petitioner has also prayed that in the said FIR, appropriate Sections also be made for the other victims and outraging modesty of the women in the police custody. The further prayer is in respect of suspension of the erring police officers and the staff, who failed to take appropriate action on the basis of the complaint filed by the petitioner. The petitioner also prays for framing guidelines to deal after the inquiry made by the Magistrate into cause of death in police custody.

2. Heard learned Advocate Mr. Prakash Ambedkar instructed by learned Advocate Mr. M. B. Sandanshiv for the petitioner and learned Public Prosecutor Mr. A. B. Girase for respondents/State.

3. After hearing all the parties concerned, which is, in fact, at the preliminary stage, we had made it clear that, at this stage, this Court would pass the interim order and would deal with the prayer in respect of framing guidelines in respect of course of action to be taken in case of custodial death after the report of the concerned Judicial Magistrate First Class.

4. Before considering the submissions, we would like to place on record the facts in the case. It is contended that a meeting was organized by the Hindu Sakal Samaj Morcha on 10.12.2024, which is stated to be an extremist right wing group. It was in respect of protest against atrocities allegedly given to Hindu's in Bangladesh. The said meeting place was located a few meters away from Bharat Ratna Dr. Babasaheb Ambedkar's statue. According to the petitioner, there was no adequate police security deployed in Parbhani, despite the antecedents of hate speeches against depressed sections including minorities, which had built social tensions. According to the petitioner, police had failed to take effective preventive steps such as videography of such speeches at such events and registering FIRs for the hate speeches. A person by name Datta Sopan Pawar had vandalized a replica of Indian Constitution kept in a glass enclosure near a statue of Bharat Ratna Dr. Babasaheb Ambedkar, which is outside the Parbhani Railway Station. On that day, said Datta Pawar was apprehended and was given in the custody of police immediately by the persons, who were present. FIR was lodged against him. Petitioner further states that the police for the ultimate intention declared that said Datta Pawar has done the act without understanding the consequences. Datta Pawar is a member of OBC, Dhargar Community. Said Datta Pawar was then declared by the Special Inspector General of Nanded as lunatic. On the

next day i.e. on 11.12.2024, there was spontaneous reaction from the local persons over all these events and the protest March was taken up which alleged to have been turned violent. It is stated that there were instances of pelting stones and setting fire to the empty vehicles. Police had imposed prohibitions on public gatherings. The police then started targeting peaceful protesters by entering their houses through an unlawful combing operations in various areas, wherein over 50 youths and women including one Somnath Suryawanshi were arrested after beating them. Unnecessary stringent Sections were invoked making it impossible to get bail. Various videos regarding the brutality of police were went viral on social media. Somnath Suryawanshi was 35 years old M.A. B.Ed. and a final year law student of the 5 years course. He was the son of the petitioner. In the videos, it could be seen that Somnath was carrying book of Constitution of India and recording the incident in the protest. His arrest was illegal and then he was subjected to inhuman atrocities. The rights of the arrested persons were violated. He as well as other persons were produced before the Magistrate on 12.12.2024. The others were also subjected to brutality and their injuries were visible, swollen, however, they were afraid to speak to the Magistrate due to the threats those were given. The Court had granted police custody of two days. Further brutal assault was given to Somnath. His situation had worsen when he was again produced before the

Magistrate on 14.12.2024. Thereafter, his custody was transferred to Magisterial custody. Around 6.49 a.m. suddenly Somnath died on 15.12.2024, while in judicial custody. It was alleged by the police that he was complaining chest pain. The police had then informed around 9.00 a.m. of 15.12.2024 that whether Somnath was her son and what is his caste. It was then informed to her that Somnath passed away due to heart attack. In view of inquest panchanama also, there were notings regarding various injuries on his person. In the postmortem primary reasons were assigned by the concerned Doctor as "shock due to multiple injuries". The body of the Somnath Suryawanshi was then taken to Aurangabad. When petitioner reached Parbhani, Police Officer by name Ashok Ghorband took her to Inspector General of Police. Said police officer then told that he would help the brothers of Somnath to get a job in the police department and told that the family should take Somnath's body to their village at Latur for the last rites and not at Parbhani. Petitioner also states that she was offered amount of Rs.50,00,000/- for not filing complaint against him or any other police officer. The petitioner refused everything and requested that justice should be given to her son. During the meeting with Inspector General of Police Mr. Shahaji Umap, he asked as to whether Somnath was asthmatic, which she answered in the negative and then again Inspector General of Police also informed that Somnath has died due to heart

attack and his body has been taken to Aurangabad for postmortem. Petitioner told that her son had died due to police beating. Thereafter on every moment, there was police pressure to take the body to Latur, however, at the request of the family of the petitioner, thousands of people had gathered at Parbhani and, therefore, Somnath's body was taken to Parbhani and the last rites were performed there. She had thereafter lodged complaint stating that Somnath has died in the police custody and it was a murder. Her statement was recorded under Section 183 of the Bhartiya Nagrik Suraksha Sanhita wherein also she demanded the same prayer that offence for murder of her son should be registered. About 23 complaints alleging police brutality were received by Parbhani Police, but no action has been taken. Initially, the inquiry was conducted by the local police, but thereafter the State Government has ordered the State CID Probe and suspended the Local Crime Branch Inspector Ashok Ghorband. Now, a Judicial Commission headed by the retired Judge of this Court was appointed to investigate the custodial death of Somnath. The final postmortem report was submitted to learned Judicial Magistrate First Class, Parbhani. Learned Judicial Magistrate First Class, Parbhani has conducted the inquiry as contemplated under Section 196 of the Bhartiya Nagrik Suraksha Sanhita and submitted it to the Principal District and Sessions Judge, Parbhani. The Principal District and Sessions Judge, Parbhani has

forwarded the same to the Registrar of this Court. The petitioner states that there is no provision in the law that what should be done after Judicial Magistrate First Class places the report regarding his inquiry and therefore, the guidelines are required to be framed, however, till today the FIR has not been registered for the murder of her son. Hence, the writ petition.

5. Learned Advocate Mr. Prakash Ambedkar instructed by learned Advocate Mr. M. B. Sandanshiv submits that unnecessarily Somnath and others were roped by the police when they were 132, 121(1), 121(2), 118(1), 118(2), 324(4), 223, 126(2), 189(2), 191(2), 191(3), 190 of Bhartiya Nyaya Sanhita, 2023, under Section 135 of the Maharashtra Police Act, 1951, under Sections 3, 4 of the Prevention of Damage to Public Property Act, 1984 and under Section 7 of the peacefully protesting and it is then alleged that they have committed an offence under Section 7 of the Criminal Law Amendment Act, 1932, for which the FIR vide Crime No.590 of 2024 came to be registered with Mondha Police Station, District Parbhani. In the videos it can be seen that Somnath was keeping calm and there was no overt act on his part to indulge in criminal activity, still he was assaulted. The Medico Legal Certificates of various persons would show that they had sustained injuries. This is all due to the police atrocities. Of course, there might be some such persons at some places where action of pelting stones to the

police vehicles and the public property might have taken place, but Somnath was taking part only at one place i.e. near the statue of late Vasant Rao Naik, the then Chief Minister of Maharashtra. For some act which might have taken place at a different place, Somnath could not have been made responsible. After the Magisterial custody was awarded on 14.12.2024, Somnath was kept in the local jail, yet the atrocities continued. It is then the police story that around 19.40 hours, Somnath was brought to jail, but thereafter he made complaint regarding chest pain and restlessness. He was taken to Civil Hospital, Parbhani at 6.30 a.m. on 15.12.2024. His ECG was taken around 6.40 a.m. and he was declared dead at 6.49 a.m. His dead body was taken to Aurangabad. When the request was made by learned Judicial Magistrate First Class, Court No.3, Parbhani, the team of seven doctors performed the postmortem. The videography has been done and the cause of death that has been stated is "shock following multiple injuries." Thereafter, the detailed inquiry has been conducted under Section 196 of the Bhartiya Nagrik Suraksha Sanhita by learned Judicial Magistrate First Class, Parbhani. He had examined the co-accused nearly 27 in numbers. Their OPD papers were also considered and he concluded that the material on record manifests "gross violation of human rights". In clear terms, he concluded that Somnath died due to the police authorities. Now, the Government is interested in saving the police personnel responsible for

causing those injuries and, therefore, on its own, certain actions have been taken. The Deputy Superintendent of Police, State CID, Parbhani has sought opinion regarding the final cause of death from Department of Forensic Medicine and Toxicology, Grant Government Medical College and Sir J.J. Hospital, Mumbai. The State CID has been brought in picture, however, action of lodging the FIR, when there is *prima facie* case, has not been undertaken.

6. Learned Advocate Mr. Prakash Ambedkar, in order to support his contention, relies on the decision in ***Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, [AIR 1978 SC 851]*** and submits that powers under Article 226 of Constitution of India can be invoked for giving guidelines.

7. Learned Advocate Mr. Prakash Ambedkar also relies on the rejoinder to affidavit-in-reply filed on behalf of the respondents. In this, the petitioner has reiterated the entire story and it is stated that the guidelines were given in ***D. K. Basu v. State of West Bengal, [1997 (1) SCC 416]*** and ***Yashwant v. State of Maharashtra, (2018) AIR (SC) 4067***, which mandate that in cases of custodial death with visible injuries, a criminal case under Section 302 of Indian Penal Code must be registered forthwith. The CID is continuing its probe without treating the matter as a cognizable crime and prolonging the investigation in respect

of facts finding inquiry. It was earlier pointed out to this Court that the officer of the CID, who is interested with the inquiry, Mr. D. B. Talpe, Deputy Superintendent of Police, CID, Parbhani had issued notices on 28.03.2025 to several persons with objectionable content, which shows that the State has made up its mind to protect the culprits and, therefore, this Court should interfere and give directions.

8. Per contra, the learned Public Prosecutor Mr. A. B. Girase relies on the affidavit-in-reply of Mr. Pavan s/o Maroti Bansod, Superintendent of Police, Crime Investigation Department, Amravati and holding additional Charge of Superintendent of Police, Crime Investigation Department, Chhatrapati Sambhajnagar and submits that the inquiry is still going on. Statements of more than 150 persons have been recorded and all the documents have been collected. Due to the order passed by this Court on 29.04.2025, the said officer has not come to the final conclusion, but the inquiry is completed and he may be allowed to submit the report to the State Government. Learned Public Prosecutor submits that the facts also disclose that Somnath had made complaint regarding chest pain and restlessness at night time and, therefore, when the fact was informed to the guard in the barrack, where Somnath was kept by co-accused persons, the said guard had provided tablet for acidity. In the histopathology report, it has been stated that there was narrowing of coronary arteries at three places. They were 60%, 80%

and 70% respectively. Deputy Superintendent of Police, State CID, Parbhani, therefore, had taken help of Doctors at J.J. Hospital, Mumbai to get the queries answered. It cannot be stated that there is any illegality that has been done. Though the Magistrate has given his report, he had based his conclusion on the basis of postmortem report. The entire facts would be considered by the State CID. It was stated that this Court cannot direct FIR to be lodged on the basis of contrary documents or incomplete inquiry. The Government is yet to conclude that there is a cognizable offence that has been made out. He therefore prayed for permitting Mr. Talpe to submit his report to the State Government and the Government will then take the action.

9. We are aware about the legal position regarding directions to be given in respect of lodging of the FIR, which have been reiterated in subsequent pronouncements. In ***Sakiri Vasu Vs. State of Uttar Pradesh and others, 2008 (2) SCC 409***, it has been observed thus :-

25. we have elaborated on the above matter because we often find that when someone has a grievance that the First Information Report has not been registered at a police station and/or an appropriate investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that High Court should not encourage this practice and should

ordinarily refuse to interfere in such matters and relegate the petitioner to his altering remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers and if that is of no avail, by approaching a Magistrate concerned under Section 156(3).

26. *If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?*

Thereafter, in ***Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and Ors., [(2016) 6 SCC 277]*** which has been then referred in ***M. Subramaniam and Ors. Vs. S. Janaki and Ors., [(2020) 16 SCC 728]***, the said legal position was more clarified. We also want to take note of the decision in ***Divine Retreat Centre v. State of Kerala and others, [(2008) AIR (SC) 1614]***, wherein it has held that a writ petition in

case of non taking of action by police on information given to them are not maintainable and the remedy would be then available to the informant under Section 190 and 200 of the Code of Criminal Procedure. However, in all these cases, no point of death of a person, who is in either the police custody or the judicial custody, was involved. In respect of offences those occur against a person in police custody or custodial death, in our opinion, the stand that is required to be taken by this Court should be different. Being the protectors of the constitutional rights of a citizen, who by virtue of the order passed in a judicial process, is in the custody, then if his constitutional rights are violated by an officer or any other citizen in jail, then at this *prima facie* stage, we say that the interference is required.

10. Here, the record shows especially the report of learned Judicial Magistrate First Class, Parbhani that in all 27 accused persons including Somnath were remanded to police custody till 14.12.2024, after they were allegedly arrested on 12.12.2024. At that time, no complaint was made before the learned Magistrate, rather note has been taken by the learned Chief Judicial Magistrate, Parbhani that the accused persons have not made any complaint of ill treatment at the hands of police. Note has also been then taken about the statement of Advocate that accused might be having complaint, but they are under pressure from police. Therefore, learned Chief Judicial Magistrate once again asked the

accused persons as to whether they have any complaint, but all the persons answered in the negative. Again when they were produced on 14.12.2024, no complaint was made regarding the ill treatment and then they were taken in Magisterial custody till 27.12.2024. Around 19.40 p.m. on 27.12.2024, it appears that they were admitted to District Prison at Parbhani. Here, the order that was passed by learned Judicial Magistrate First Class, Parbhani on 14.12.2024 would show that the accused persons including Somnath were produced before him at 12.45 p.m. When the learned Judicial Magistrate First Class Court is in Parbhani and the District Prison is in Parbhani, then why it should take the police to give the custody of all the accused persons under the jail warrant that too collectively around 19.40 hours, would be a question. Now, learned Judicial Magistrate First Class has conducted a detailed inquiry as contemplated under Section 196 of Bhartiya Nagrik Suraksha Sanhita (earlier Section 176 of the Code of Criminal Procedure). When an accused person dies in jail or in police custody, such inquiry under Section 176 of the Code of Criminal Procedure/Section 196 of the Bhartiya Nagrik Suraksha Sanhita, is mandatory. Further, it can also be seen that the learned Judicial Magistrate First Class was preent when the postmortem was done. The Executive Magistrate/Naib Tahsildar and other officers along with two panchas and the doctors, who were conducting the postmortem, were also present and the entire process of

postmortem has been videographed. Even in the inquest panchanama, various injuries on the person of Somnath have been reported. The staff at the Civil Hospital has also been inquired by learned Judicial Magistrate First Class. Therefore, the entire record then shows that there were injuries on the person of deceased and the copy of the postmortem report which has been made available would show that on the person of deceased, there were 24 visible injuries. Of course, there are internal injuries also. The question would then arise as to who has caused those injuries and it is stated that the age of those injuries i.e. of contusions and abraded contusions is between few hours to four days before death and all abrasions were between 2 to 4 days before death. The team of seven doctors has given a probable cause of death as “shock following multiple injuries”.

11. What has been seen is that if the inquiry officer or the investigating officer has any query to make the medical officer in respect of death of a person, they usually approach those medical officers, who conducted the autopsy. Here, interestingly, the Deputy Superintendent of Police, State CID, has taken his own decision to make queries and seek opinion from team of medical experts from J.J. Hospital, Mumbai and said Committee appears to have given report on 28.04.2025 to Deputy Superintendent of Police, State CID, Parbhani. We may not express our opinion in this respect at this stage, yet the question that is required to

be gone into is, as to why he had not approached the seven members team from Aurangabad, who conducted the autopsy, for the opinion in respect of queries.

12. Deceased Somnath was in judicial custody and, therefore, was in jail as aforesaid. Now, when there was *prima facie* material on record i.e. on the basis of inquest panchanama, postmortem report, report of learned Judicial Magistrate First Class under Section 196 of the Bhartiya Nagrik Suraksha Sanhita and the complaint application by the petitioner, a cognizable offence was made out and, therefore, State ought to have registered the FIR. The guidelines in ***Lalita Kumari v. State of U. P. and Ors., 2014 (2) SCC 1***, were *prima facie* made out. When the petitioner went to police station and tried to lodge the FIR, her FIR was not recorded. She has given the complaint application and the copy of the same to the superior and, therefore, we are of the opinion that those material which she was placing before the police, were sufficient for registration of the FIR.

13. We would like to take note of the decision of the Coordinate Bench in ***Anna Maruti Shinde v. The State of Maharashtra, [Criminal Writ Petition No.4107 of 2024 decided on 07.04.2025]***, (the case of encounter of Late Akshay Shinde in Badlapur), wherein almost similar submissions were made on behalf of the State and the decision in

People's Union for Civil Liberties and Anr. v. State of Maharashtra and Ors., [(2014) 10 SCC 635], was harped upon and it was tried to be submitted that the inquiry report of a Magistrate is not binding on the State and thus guidelines of the Supreme Court have been strictly adhered to in the present case also. The Coordinate Bench has referred to paragraph No.31 of the ***People's Union for Civil Liberties (Supra)*** regarding the 16 point guidelines to be followed in the matters of investigating police encounters in cases of death and the Standard Operating Procedure. Of course, here, in the present case, the police encounter is not in strict sence, but it is a death when Somnath was in custody, but prior to that he was in the police custody when it is alleged that he was subjected to brutality. In ***Lalita Kumari (Supra)***, it has been held that when a cognizable offence is disclosed on the basis of a complaint application, then the police are duty bound to register the FIR and take up the investigation. In ***Anna Maruti Shinde (Supra)***, registration of the FIR was directed and Special Investigation Team was constituted.

14. Here, at this stage, by way of interim order, we are constrained to direct respondent No.1 and Police Inspector Mondha Police Station, Parbhani to register the FIR on the basis of the complaint application dated 18.12.2024 given by the petitioner. Such FIR be registered within a period of one week and Superintendent of Police, Parbhani is directed

to handover the investigation to a police officer of the rank of Deputy Superintendent of Police.

15. The interim order granted by this Court on 29.04.2025 asking Mr. Talpe not to come to the final conclusion and submit report would stand vacated, after the registration of the FIR as directed above.

16. We make it clear that for rest of the prayers, the writ petition is kept pending, for which additional affidavit-in-reply, if any, to be filed within a period of three weeks from today. Copy of the same be given to the other side in advance.

17. Place the matter for further consideration on 30.07.2025.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm