HIGH COURT OF JUDICATURE AT BOMBAY


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

## CRIMINAL WRIT PETITION NO.1612 OF 2025

Satish Salian ....Petitioner

Versus

State of Maharashtra
and others ....Respondents

.....

WITH

INTERIM APPLICATION [STAMP] NO.8109 OF 2025

IN

CRIMINAL WRIT PETITION NO.1612 OF 2025

.....

WITH

INTERIM APPLICATION NO.2390 OF 2025

IN

CRIMINAL WRIT PETITION NO.1612 OF 2025

.....

WITH

INTERIM APPLICATION NO.2393 OF 2025

IN

CRIMINAL WRIT PETITION NO.1612 OF 2025

.....

WITH

INTERIM APPLICATION NO.2391 OF 2025

IN

CRIMINAL WRIT PETITION NO.1612 OF 2025

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Mr. Nilesh Ojha, Advocate a/w. Abhishek Mishra, Vijay Kurle, Shivchand Mishra, Ms. Ishwarlal Agarwal, Ms. Tanveer Nizam, Ms. Dipali Ojha, Ms. Anushka Sonawane, Devkrishna Bhambri, Shivam Gupta, Ayush Tiwari, Ms. Sonal Manchekar, Sagar Ugale, Ms. Payal Padwale, Vikas Pawar, Ms. Priyanka Sharma, Ms. Dipeeka Patil, Ranjeet Yadav, Jairam Yadav, Sumer Singh, Pratik Sarkar, Bhagwan Kasture, Rahul Yadav, Jayendra Manchekar, Ms. Meena Thakur, Ravi Jadhav for the Petitioner in WP/1612/2024 and for the Applicant in IA(ST)/8109/2025, IA/2390/2025 & IA/2393/2025.



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Mr. Shishir Hiray, Public Prosecutor a/w. Ms. Sangeeta Shinde, APP a/w. Shubham Joshi, Ankit Patil, Devavrat Hiray, Sanjay Kokne, Krishna Jaiwar, Ms. Aruna Borkar for the Respondent – State.

Mr. Sudeep Pasbola, Senior Advocate i/b. Rahul Arote a/w. Uttam Singh Rathore, Shubham Gharbudve, Rajan Gurnani for the Applicant in IA/2391/2025 (intervener in WP/1612/2025).

Mr. Kuldeep Patil, Advocate a/w. Ms Saili Dhuru, Digvijay Kachare, Anay Joshi, Ms. Yukta Sawant, Ms. Sanika Joshi, Sumitkumar Nimbalkar for the Respondent No.7 CBI in WP/1612/2025.

Ms. Harpreet Mansukhani Saigal, Intervener in-person in WP/1612/2025 & Applicant in IA/2392/2025.

Ms. Uma Nemlekar, Advocate i/b. Rizwan Merchant & Associates for the Respondent No.9.

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**CORAM : SARANG V. KOTWAL &**
**RANJITSINHA RAJA BHONSALE, JJ.**

**RESERVED ON : 28th AUGUST, 2026**

**PRONOUNCED ON : 02nd SEPTEMBER, 2026**

**ORDER:** [PER SARANG V. KOTWAL, J.]

1. Heard Mr. Nilesh Ojha, learned counsel for the Petitioner, Mr. Shishir Hiray, learned Public Prosecutor for the Respondent – State, Mr. Kuldeep Patil, learned counsel for the Respondent No.7 CBI, Mr. Sudeep Pasbola, learned Senior Counsel for the Applicant in IA/2391/2025, Ms. Harpreet Mansukhani



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Saigal, the Applicant/intervener appearing in-person in IA/2392/2025 and Ms. Uma Nemlekar, learned counsel for the Respondent No.9.

**2.** This Petition is filed with many prayers. There are other Interim Applications in this Writ Petition. However, after hearing the parties we find that the most important prayer in this Petition and all the Interim Applications is prayer clause (d) of this Petition, which reads as follows :

> "(d) Transfer of Investigation to CBI & Supervision by This Hon'ble Court: – Direct the State of Maharashtra to hand over the entire investigation to the Central Bureau of Investigation (CBI) and further direct that the CBI to appoint an officer not below the rank of Inspector General of Police (IGP) to lead the investigation under the direct supervision of this Hon'ble Court to ensure impartiality, transparency, and adherence to due process."

**3.** We have considered the entire scope of this Petition for consideration of this particular prayer. After considering the arguments advanced before us and the material placed before us, we considered whether the relief can be granted to the Petitioner in respect of the said prayer clause (d) of the Petition. Therefore, we are only considering the prayer clause (d) of this Petition.



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**4.** The Petitioner is an unfortunate father of a young daughter who lost her life in tragic circumstances. It is the case of the Petitioner that she lost life in the suspicious circumstances and, therefore, this Petition is filed.

**SUBMISSIONS OF LEARNED COUNSEL SHRI OJHA ON BEHALF OF THE PETITIONER :**

**5.** In the background of the case, learned Counsel Shri Ojha appearing for the Petitioner submitted that it is not a case of accidental death or a simple case of suicide, but, the death of the Petitioner's daughter is the outcome of a deep rooted conspiracy involving powerful people.

**6.** After serious consideration to the arguments and the material, we are of the opinion that the matter requires investigation; and hence we are not making any observations regarding the allegations made by the Petitioner. The police have, of course, conducted the investigation; but that investigation is under Section 174 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). The other relevant procedure is prescribed under Sections 175 and 176 of Cr.P.C.. For the reasons recorded hereinafter, we are of the opinion that in this particular case the



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said procedure is inadequate. The case requires substantive investigation of a cognizable offence. The procedure was provided under Cr.P.C. (as it was in operation at the relevant time) starting from Section 154 onwards till filing of the Police Report on completion of investigation under Section 173 of Cr.P.C.. Now, of course, Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') is in operation and, therefore, the substantive investigation would be under Section 173 onwards of BNSS. Now the procedure for investigation is provided under Section 176 onwards of BNSS for investigation of cognizable offences.

**7.** Since we are taking a view that the matter requires investigation, we are not making any observations which would directly or indirectly affect the investigating agency in conducting thorough investigation.

**8.** For the same reason, we are not making any observations against any individual. We are referring to the facts and circumstances only to the extent which is necessary for deciding this issue.

**9.** Keeping in line with our approach, we are not referring to the allegations made by the Petitioner in detail against some



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individuals. Very briefly, the gist of the allegations is that the Petitioner's daughter was working with Sushant Singh Rajput. She got to know about some objectionable activities of the powerful people. She gave that information to Sushant Singh Rajput, who innocently divulged that to others and ultimately that information reached back to those people; and, therefore, to silence the Petitioner's daughter her murder was committed. It is also case of the Petitioner that she was subjected to gang rape before her murder was committed.

This is the gist of allegations made by the Petitioner. According to the Petitioner, a false story was concocted and it was shown as if the Petitioner's daughter jumped from a flat of her fiancé which was on the 12th floor of a building; and committed suicide, between the night of 8th June, 2020 and 9th June, 2020.

**10.** Shri Ojha submitted that some tainted police officers were involved in creating a false scene, false evidence and destroying the real evidence.

**11.** The Petitioner himself was called by the officers of Malvani police station, Mumbai at about 4.00 a.m.. He was told about the tragic news. The Petitioner and his wife immediately



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started from their house in a car. On the way, the Petitioner called his daughter's friend who advised them to go to Shatabdi Hospital, Kandivali; but also told him not to look at the body as he would not be able to bear the pain. On the next day, the Petitioner was called at the police station and was shown a photograph of the dead body. The Petitioner raised suspicion that no blood was seen; which was expected in a case of a death caused due to fall from a high-rise building. After a few days, a few persons approached the Petitioner and offered to lodge a complaint on his behalf purportedly to avoid defamation of the deceased. They took his signatures on some blank papers. Those papers were misused. According to Shri Ojha, the Petitioner was not convinced that his daughter had committed suicide. The Petitioner was not given any information regarding the investigation. He was not handed over a copy of the postmortem report. The postmortem examination was conducted on 11.6.2020 though the death purportedly had occurred between the night of 8th and 9th June, 2020.

**12.** The officers of Malvani police station lodged Accidental Death Report vide ADR No.85/2020 at 3.07 a.m. on



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9.6.2020. It is case of the Petitioner that the police did not make any inquiry with the Petitioner before registering the ADR. The police started investigation under Section 174 of Cr.P.C.. The Petitioner was not informed regarding the investigation at any stage. On 10.6.2020, the DCP of Malvani Zone held a press conference and declared that the deceased had committed suicide. The reason for conducting postmortem after a few days was cited as spread of COVID-19 and operation of the guidelines for taking precaution to ensure that the death was not due to Corona virus. Sushant Singh Rajput committed suicide on 14.6.2020; but on this occasion the postmortem was conducted within seven hours from the incident. According to the Petitioner both these incidents were interlinked. The police conducted the investigation under Section 174 of Cr.P.C. and submitted their report to the ACP on 4.2.2021. It was not submitted before a Judicial Magistrate and the copies were not given to the Petitioner or other family members.

**13.** Subsequently the investigation was reopened and a Special Investigation Team was formed to investigate the death of the Petitioner's daughter; but even during the reinvestigation the Petitioner was kept in the dark.



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**14.** Finally, the Petitioner sent a complaint addressed to the Commissioner of Police, Mumbai under Section 154 of Cr.P.C. seeking registration of FIR and investigation in his complaint.

**15.** Learned Counsel Shri Ojha submitted that inspite of the clear allegations of commission of a cognizable offence, the police did not take any action and the Petitioner's FIR was not registered. Under these circumstances, he approached this Court by way of the present Petition for the reliefs claimed therein.

**16.** Apart from these submissions on facts, he raised certain concerns about the factual aspects of the investigation.

**17.** On legal issues, Shri Ojha submitted that the purpose of investigation under Section 174 of Cr.P.C. is very limited. The procedure is provided under Sections 174 to 176 of Cr.P.C. only to determine the cause of death. The police are not empowered to conduct an investigation of the cognizable offence under those provisions. If the police suspected commission of a cognizable offence, the next step was registration of FIR and investigation under the provisions laid down under Section 154 onwards culminating in the police report under Section 173 of Cr.P.C..

**18.** In support of his submission, Shri Ojha relied on



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various judgments. He mainly relied on the judgment of the Calcutta High Court in the case of **Kishwar Jahan & another Vs. State of West Bengal & others**[1]. He invited our attention to the discussion in that judgment regarding the scope and limitations of the investigation under Section 174 of Cr.P.C.. The said judgment is based on a few Supreme Court judgments.

**19.** Shri Ojha submitted that the Petitioner does not have any equally efficacious remedy but to approach this Court for the reliefs claimed herein. He submitted that the Petitioner cannot be sent to exercise his option of approaching the learned Magistrate under Section 173(4) and 175(3) of BNSS (similar to Section 156(3) of Cr.P.C.). He submitted that this case deserves investigation by the Central Bureau of Investigation (CBI). The Magistrate is not empowered to direct investigation by CBI and, therefore, the Petitioner cannot be relegated back to the Court of Magistrate under those provisions. In support of his contention, he relied on the judgment of a Division Bench of this Court in the case of **Param Bir Singh Vs. State of Maharashtra & others**[2] and on the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar**

1 2008 SCC OnLine Cal 564

2 2021 SCC OnLine Bom 516



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**Pandey & another Vs. Seesh Ram Saini & others**[3]. He invited our attention to various shortcomings in the investigation conducted by the police. We shall refer to that investigation at the appropriate place in this order.

**SUBMISSIONS OF LEARNED P.P. SHRI HIRAY ON BEHALF OF THE STATE:**

**20.** Shri Hiray submitted that, in the first stage, the police had completed the investigation under Section 174 of Cr.P.C.. vide the report dated 26.10.2020. It was submitted before the Special Executive Magistrate, who in this case was ACP Dilip Yadav of Malvani Zone. He accepted the report on 4.2.2021 and the matter was closed. On 11.12.2023, the Government of Maharashtra requested the Commissioner of Police, Greater Mumbai to conduct further investigation, as many questions were raised in respect of death of the Petitioner's daughter and there was a possibility that some new evidence could be revealed. It was further mentioned in the said communication dated 11.12.2023 that it was necessary to review the entire matter. Pursuant to the said letter, the Commissioner of Police, Greater Mumbai issued an order dated 12.12.2023 directing investigation under Section 174 of Cr.P.C.. in

3 2025 SCC OnLine SC 1951



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ADR No.85/2020 of Malvani police station, Mumbai. The investigation was directed to be carried out under the guidance of Additional Commissioner of Police, North Division, Mumbai and under the supervision of Deputy Commissioner of Police, Zone-11. The Senior Inspector of Police, Malvani Police Station was directed to conduct the inquiry. He was directed to keep the Commissioner of Police, Greater Mumbai informed about the progress of investigation.

**21.** Pursuant to those directions, the investigation was carried out. Further investigation papers also contain the statement of the Petitioner which was received by the police on 14.12.2023 requesting a detailed inquiry regarding his daughter's death. The police started the investigation again in December, 2023. It went on for quite some time and finally the report was submitted to the Assistant Commissioner of Police and Special Executive Magistrate Malvani Division, Mumbai on 14.4.2026. The conclusion in the report of the further investigation was the same as was recorded in the report dated 26.10.2020. It was observed that no fresh evidence was discovered in the further investigation and it was concluded that the Petitioner's daughter had committed



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suicide and that her death was due to head injury with multiple injuries (unnatural). The said summary was accepted by the Assistant Commissioner of Police and Special Executive Magistrate, Malvani Division vide her order dated 6.5.2026.

**22.** Shri Hiray submitted that the extensive investigation, carried out on the two occasions, resulted in the same conclusion that the Petitioner's daughter had committed suicide and that there was no foul play involved. He submitted that during both these inquiries the Petitioner's statements were recorded on multiple occasions. In none of these statements he had raised any suspicion about commission of any offence. Even the Petitioner's wife had not raised any suspicion in various statements given by her. The Petitioner and his wife's statements were also recorded in connection with another case. Those statements were recorded under Section 164 of Cr.P.C. and in those statements also they had not made allegations regarding death of their daughter.

**23.** The affidavit-in-reply filed on behalf of the investigating agency refers to the investigation carried out by them.

**24.** Shri Hiray submitted that, in any case, the Petitioner has an alternate remedy of approaching the Magistrate's Court



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praying for investigation under Section 175 of BNSS. He submitted that since the police have conducted thorough investigation, no relief can be granted in this Petition. Shri Hiray submitted that the police investigation includes the statements of friends of the deceased who were present in the flat at the relevant time when the Petitioner's daughter committed suicide by jumping from the 12th floor of Rohan Rai's flat at Malad. Their statements show that the Petitioner's daughter had consumed alcohol. She was depressed because a few important deals had failed. She was also depressed because she was under the impression that few of her friends were avoiding her. One more reason mentioned for her depression was regarding differences with the Petitioner himself. He, therefore, submitted that because of these reasons, the Petitioner's daughter committed suicide and, there was no offence involved. The police did not come across any evidence showing involvement of any of her friends or even other persons named by the Petitioner. He submitted that the postmortem notes and the CA reports are in consonance with the case of suicide. He, therefore, submitted that the Petition be dismissed, or at the most, the Petitioner be granted liberty to approach the Court of Magistrate to



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file a complaint and seek investigation under Section 175 of BNSS.

**SUBMISSIONS OF LEARNED SENIOR COUNSEL SHRI PASBOLA ON BEHALF OF THE INTERVENER:**

**25.** Shri Pasbola, learned Senior Counsel appearing for the intervener made certain submissions. At the outset he expressed sympathy for the Petitioner and agreed that the Petitioner deserves proper closure. However, he submitted that the intervener should not be targeted for political motive. He submitted that the Petitioner has an alternate remedy to approach the Magistrate's Court as submitted by Shri Hiray. He relied on the judgment of the Hon'ble Supreme Court in the case of **Sujal Vishwas Attavar & another Vs. The State of Maharahtra & others**[4]. He submitted that the intervener has locus to intervene in this Petition as he was an affected party and the CBI cannot be directed to have roving inquiry. In support of this contention, he relied on the observations made by the Hon'ble Supreme Court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar and Ors.**[5]. He relied on the observations of the Hon'ble Supreme Court in the case of **State of**

4 Decided on 4.5.2026 in Special Leave Petition (Crl.) No.1088/2026 (Hon'ble Supreme Court)

5 (2011) 14 SCC 770



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**Haryana Vs. Bhajan Lal**[6] wherein it was observed that the criminal proceedings which are manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, they cannot be continued. He submitted that the present Petition is motivated with malafide intentions and it is filed to damage the reputation of the intervener. The intervener is not directly or indirectly connected with the alleged offence. All the allegations made against him are based on media reports and hearsay news. They have no basis. Initially, a PIL was filed by a Petitioner who had no concern with the family of the deceased. Though that PIL is not pressed, there is a reference to that PIL in the prayer clauses of this Petition, which indicates that the present Petition is filed not as an independent grievance of the Petitioner but only to support the PIL and to cause damage to the intervener's reputation.

**26.** On the merits of the matter, Shri Pasbola supported the contentions of Shri Hiray. Shri Pasbola submitted that the intervener has full sympathy for the Petitioner i.e. father of the deceased; but he cannot be used as a tool to harass the intervener.

6 1992 Supp (1) SCC 335



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**SHRI OJHA'S RESPONSE :**

**27.** Shri Ojha objected to the intervention on behalf of the intervener. He submitted that the Intervention Application cannot be entertained. In support of his objection, he relied on the judgment of the Calcutta High Court in the case of **Soumen Nandy Vs. State of West Bengal & others**[7] and in particular on the observations of the Hon'ble Supreme Court made by a Three-Judge Bench in the case of **Romila Thapar & others Vs. Union of India & others**[8]**.**

**REASONS AND CONCLUSION :**

**28.** Before we discuss the arguments and the material placed before us, it is necessary to mention a clear statement made by Shri Kuldeep Patil, learned counsel appearing for the CBI in answer to our specific question. Shri Kuldeep Patil, on instructions, stated that the CBI has not investigated the case of the Petitioner's daughter and there is no order passed by the Hon'ble Supreme Court in connection with her death, to the knowledge of officers of the CBI. Considering this statement, we proceeded to hear and

7 2023 SCC OnLine Cal 1191
8 (2018) 10 SCC 753



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decide this Petition.

**29.** The investigation in this case is carried out by the officers of Malvani police station under Section 174 of Cr.P.C.. We are referring to the provisions under Cr.P.C. because at the relevant time Cr.P.C. was in operation and the investigation was pending till filing of the second report in April, 2026. The investigation was carried out under the provisions of Cr.P.C.. There are, of course, corresponding provisions under BNSS. It is necessary to examine the scope of investigation under Section 174 of Cr.P.C. and to examine whether the investigation is effective and adequate.

**30.** Section 174 of Cr.P.C. reads thus :

> "**174. Police to inquire and report on suicide, etc**.—(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the



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place, where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When—

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man



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> appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.
>
> (4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate."

The salient feature of Section 174 Cr.P.C. is that the police officer making investigation has to draw up a report of the apparent cause of death describing the wounds and stating in what manner and by what weapon or instrument such wounds appeared to have been inflicted. He has to make an investigation and draw up a report in presence of two or more respectable inhabitants of the neighborhood. He has to visit to the place where the body of such deceased person is and there he has to make the investigation. In the present case, the Petitioner's daughter was removed to the hospital and her dead body was in the hospital. Therefore, naturally the police had to go there and make an investigation. At the same time, they were also required to make investigation in the presence of two or more respectable inhabitants of the neighbourhood and to make an investigation.



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Therefore, they were also required to go to the spot of incident.

**31.** Sub-section (3) of Section 174 of Cr.P.C. refers to different categories where some more duties were cast on the police officer. In the present case the first three categories would not be applicable, but, there was a possibility that the present case may fall within the category (iv) or (v). When there was any doubt regarding the cause of death, or, the police officer for any other reason considered it expedient to do so, he was required to send the body for being examined by the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government. In the present case, the postmortem examination was accordingly conducted. These categories are important because under Section 176 of Cr.P.C.. there is a provision of inquiry by the Magistrate in the cause of death. In that case, the Magistrate was mandatorily required to hold inquest if the case fell within the first two categories. Significantly, the categories (iv) and (v) under Section 174 (3) of Cr.P.C. are not covered under this mandatory requirement but in those cases the Magistrate was empowered to hold inquiry into the cause of death either instead or in addition to the investigation held by the police officer. Section 176 of Cr.P.C.



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reads thus :

> "**176. Inquiry by Magistrate into cause of death.**—(1) when the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of section 174, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of section 174, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.
>
> (1A) Where,—
>
> (a) any person dies or disappears, or
>
> (b) rape is alleged to have been committed on any woman,
>
> while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.
>
> (2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.
>
> (3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who



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> has been already inferred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.
>
> (4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.
>
> (5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.
>
> *Explanation*.—In this section, the expression "relative" means parents, children, brothers, sisters and spouse."

This inquiry is either instead or in addition to the investigation held by the police officers. In the present case, no such inquiry is held by the Magistrate empowered to hold inquest. If the inquiry is held, the Magistrate is duty bound to inform the relatives of the deceased. This particular step is not taken in the present case.



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**32.** The police officers on their own have power to investigate and for that purpose Section 175 of Cr.P.C. is important. Section 175 reads thus :

> "**175. Power to summon persons.**—(1) A police officer proceeding under section 174 may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
>
> (2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court."

The investigation in this case is carried out exercising the power under Section 175 of Cr.P.C.. This Section or for that matter Sections 174 and 176 of Cr.P.C. do not give an indication as to how the investigation carried out by the local police officer can conclude or culminate. In that case, recourse will have to be taken to Section 173 of Cr.P.C. which refers to every investigation under Chapter XII. It is provided that the investigation under that Chapter is required to be completed without unnecessary delay,



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and as soon as it is completed, the police officer is required to forward a police report to the Magistrate empowered to take cognizance on this report. However, Sections 174 and 175 of Cr.P.C. by themselves do not refer to any police report which is required to be submitted before a Judicial Magistrate empowered to take cognizance of an offence. Section 175 Cr.P.C. mentions that the police officer is empowered to summon two or more persons as mentioned in Section 174 of Cr.P.C. for the purpose of the said investigation and any other person who appears to be acquainted with the facts. The report mentioned in Section 174 of Cr.P.C. refers to the requirement to note the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body and stating in what manner or by what weapon or instrument (if any) such marks appear to have been inflicted. That report is required to be signed by the police officer or other persons or by so many of them as concur therein. The said report is required to be sent to the District Magistrate or Sub-Divisional Magistrate.

Vide Government Resolution dated 19.8.1999, the powers of the Special Executive Magistrate and Sub-Divisional



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Magistrate for the purpose of Sections 174, 175 and 176 of Cr.P.C. were given to the Assistant Commissioner of Police (Divisional) and Deputy Commissioner of Police (Zonal) respectively. This report is not required to be sent to a Judicial Magistrate. Thus, the purpose of preparing this report is very limited. The investigation therefore cannot be equated with the investigation in a cognizable offence under the provisions of Sections 154 to 173 of Cr.P.C..

**33.** In this context we may advantageously refer to the judgment of **Kishwar Jahan (supra).** The said judgment refers to a passage from a judgment of the Hon'ble Supreme Court in the case of **Pedda Narayana & others Vs. State of Andhra Pradesh**[9]. The relevant portion from paragraph-11 of the Hon'ble Supreme Court's judgment in Pedda Narayana (supra) is as follows :

> "A perusal of this provision would clearly show that the object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope

9 (1975) 4 SCC 153



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> of the proceedings under Section 174. In these circumstances, therefore, neither in practice nor in law was it necessary for the police to have mentioned these details in the inquest report."

**Kishwar Jahan'**s case further refers to Hon'ble Supreme Court's judgment in the case of **Kodali Purnachandra Rao & another Vs. The Public Prosecutor, Andhra Pradesh[10].** Paragraph-39 of the said judgment reads thus :

> "39. Section 174, Cr.PC peremptorily requires that the officer holding an inquest on a deadbody should do so at the spot. This mandate is conveyed by the word 'there' occurring in Section 174(1). Sub-section (3) of the section further requires the officer holding the inquest to forward the body with a view to its being examined, by the medical man appointed by the State Government in this behalf, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would renders such examination useless. The sub-section gives a discretion to the police officer not to send the body for post-mortem examination by the medical officer only in one case, namely, where there can be no doubt as to the cause of the death. This discretion however is to be exercised prudently and honestly. Could it be said in the circumstances of the case….."

10 (1975) 2 SCC 570



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**34.** **Kishwar Jahan's** case goes on to elaborate on this aspect. It was observed in paragraph-205 that the word "there" in Section 174 is most important and an inquest therefore is to be conducted at the citus where a dead body is found, if the death had occurred in unnatural circumstances. The cause of death has to be ascertained on the basis of the impression of the officer conducting inquest and from information collected from persons (at lease two) present at the spot. In paragraph-208, it was categorically held that after inquest, there was no scope for further enquiry / investigation under Section 174 of the Code. In paragraph-212, it was held that once the inquest was completed further enquiry / investigation under sections 174/175 of the Code is not contemplated.

In the same judgment, after noting down the suspicious circumstances the Hon'ble Court went on to hold that the CID conducting the preliminary enquiry for days together without registering FIR did afford reasonable ground to suspect foul play behind the unnatural death of the deceased in that case.

In the present case also we have noticed certain suspicious circumstances which would be discussed in the



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following paragraphs.

In the same judgment, in paragraph-245, it was observed that in order to find out whether the death was suicidal or homicidal, the CBI being empowered to exercise powers conferred on the police to investigate under Chapter XII of Cr.P.C. could have done so only on recording an FIR.

We are keeping these observations in mind in deciding this Petition.

**35.** It is quite clear that under Section 174 of Cr.P.C. there is no provision for further investigation in contrast to the specific provision of Section 173(8) of Cr.P.C.. Having noticed the inadequacy and ineffectiveness of the investigation under Section 174 of Cr.P.C. we now consider the suspicious circumstances brought out from the investigation carried out so far. We make it clear that we are conscious of the fact that we cannot hold a mini trial and are not in a position to record a finding of fact; but at the same time some reference is necessary to these circumstances to enable us to reach a conclusion that the investigation after registration of an FIR in this case is necessary.

**36.** The Police Officers are required to conclude the



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investigation under Section 174 of Cr.P.C. at the earliest to see whether registration of FIR is necessary. This is necessary to ensure that the evidence, if any, is not destroyed or does not disappear due to passage of time. The investigation cannot go on for an inordinately long time. In the present case, the investigation was carried out in two stages and it went on for about six years. This is not the object of investigation under Section 174 of Cr.P.C.. The investigation carried out by the police raises more questions than it answers. Therefore, investigation by CBI is necessary in this case.

**37.** During the course of hearing, learned Public Prosecutor Shri Hiray tendered four compilations titled as “A to D”. We are referring to the statements and material from these compilations with reference to their page numbers. These circumstances are glaring and hence give rise to reasonable suspicions necessitating thorough investigation. As we have already mentioned, the investigating agency shall not be influenced by our observations in this order but shall carry out investigation on all aspects not limited to the following circumstances. These circumstances are only mentioned to reach a conclusion whether registration of an FIR and the consequent investigation is necessary.



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**38.** Those circumstances are as follows :

**i]** **The spot panchnama was conducted belatedly** : In this case the spot panchnama was conducted belatedly and there are indications that the police were not treating the case as an accidental death case but they were suspecting foul play. The statement of Rohan Rai at Page-186 of compilation "B" is important. His statements were recorded on multiple occasions but this particular statement was a supplementary statement dated 15.6.2020. The statements of the friends of the Petitioner's daughter are recorded on more than one occasion and their basic story about the events from the evening till the incident is more or less consistent. All of them have stated that the Petitioner's daughter was under depression. All of them enjoyed a party in the evening. They had consumed alcohol. The Petitioner's daughter had a video call with her friend Ankita from London. She had a long conversation. She then went in the master-bedroom. She did not open the door. After some time, the friends entered the bedroom and they noticed her lying on the ground. The flat was on the 12$^{th}$ floor. This description is mentioned by all of



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them. Significantly in Rohan Rai's supplementary statement dated 15.6.2020 he mentioned a few important aspects. He has stated that his friends Himanshu and Indranil did not allow him to go down as according to them he would be shocked. Therefore, he waited with his friend Resha inside the flat. The Petitioner's daughter was taken to the hospital by Himanshu and Indranil. After some time, Resha called Indranil, who told her that he was taking the injured to the hospital. After that Rohan Rai and Resha came down. They were about to go to the hospital in his car. At that time the police came near his building. They made some preliminary inquiry with him and they conducted inspection of the spot. Then they took Rohan to his 12th floor flat. The police went inside his room and inspected it. Significantly Rohan Rai was asked to remove his clothes and the police carried examination of his person. After some time, one of their friends called telephonically and informed them that she was taken to Evershine Nursing Home, Malad and then to Tunga Hospital, Malad and finally to Shatabdi Hospital, Kandivali where she was declared dead.



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These particular events are quite significant. This was before registration of ADR and even before the police were informed that the deceased had died. There is no such reference in the ADR recorded by the police. The police were at the spot very shortly after the incident. They suspected Rohan Rai but they did not conduct the spot panchnama. It was infact conducted between 9.40 a.m. to 9.45 a.m. on 9.6.2020; after more than nine hours from the incident. This aspect has remained unexplained and raises reasonable suspicion about the steps taken by the police right at the beginning.

**ii]** **The timing of ADR No.85/2020**: ADR No.85/2020 registered at Malvani police station, Mumbai shows that the time of the incident or time of death was mentioned as 2.25 a.m. on 9.6.2020. Registration of ADR was at 3.07 a.m. on 9.6.2020. The ADR mentions that the police had already recorded the statements of her parents and that they had not expressed any suspicion or complaint against anyone. The first statement of the Petitioner recorded by the police mentions that he received a phone call from Malvani police station at



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about 3.00 a.m. on 9.6.2020. He was asked to go to Shatabdi Hospital at Kandivali. He reached the hospital at 4.00 a.m.. That time, he came to know about the death of his daughter. In that statement, he had stated that he did not have complaint against anyone. This statement itself shows that he had reached the hospital at 4.00 a.m. and then his statement was recorded. Therefore, it is not explained as to how a reference to that statement is made in the ADR registered at 3.07 a.m. on 9.6.2020.

iii] **CCTV footage showing presence of Police Officers** : The police had visited the said building in the night itself. The panchnama and description of CCTV footage are included in the compilation "A" from page No.65 onwards. Page No.67 shows that the police were present along with Resha and Rohan Rai at 2.14 a.m. in the said Flat No.1202 on 9.6.2020. Page No.69 shows that the police were present in that flat at 1.33 a.m.. On page No.75 it is mentioned that the police were present in the building at 12.59 a.m. on 9.6.2020. Thus, right from about 1.00 a.m. to 2.14 a.m. immediately the police were present at the spot in the building. There is no



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further reference either in the ADR or in the following investigation as to why they had gone there. There is no reference as to who were those police officers and what investigation they had carried out there and why there is no such reference in the ADR or in the following reports.

iv] **No blood at the spot where she had fallen :** As we have observed, the spot panchnama was carried out belatedly. There are statements of at least two witnesses at page Nos.217 & 218 in compilation "B" who were standing near the spot where she had fallen. They had actually heard the sound of somebody falling. Both these witnesses have described that she had fallen on her face and blood was oozing from her head. Those statements are recorded on 15.8.2020 and 14.8.2020 respectively. The police had not recovered any blood stained earth from the spot and there was no bleeding injury to the head except bleeding injury to the chin. Their statements were important.

v] **Injuries mentioned in the postmortem notes** : The postmortem notes mentioned the following six injuries :



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1. CLW seen over chin 1x1x1 cms reddish, irregular, oedematus;
2. Grazed abrassion seen over upper part of chest and abdomen, reddish;
3. Abraded contusion seen on left elbow.
4. Abrasion seen on right arm, reddish.
5. Abrasion seen on left upper part of thigh, lower leg and knee, reddish.
6. CLW seen over right heel, reddish.

The internal examination showed that there was linear fracture of skull bones with sign of infiltration staining extended to base in anterior and middle cranial fossa. There were multiple ribs fracture with contused intercostal muscles. All other organs including pleura, larynx, trachea, bronchi, pericardium, peritioneum etc. were intact. The frontal teeth had fallen.

If the deceased had fallen on her face from 12$^{th}$ floor, then it is difficult to accept that there was only one injury of the size 1 x 1 x 1 cm in the nature of CLW over the chin. Not a single facial bone was fractured. There was neither fracture of mandible nor even of nasal bone which is quite delicate. We find this difficult to accept. This, of course, would be subject to expert's opinion.



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**vi] Suspicion raised by Chemical Analyzer in respect of less blood on articles** : The Assistant Chemical Analyzer attached to the Forensic Science Laboratory, Mumbai had raised a significant issue. They had addressed a letter to the Deputy Commissioner of Police and had informed him that they had received the articles and it was mentioned in the forwarding letter that the death was caused because of jump from the 12th floor. In that case, it was expected that there was more blood on the articles, but, when the articles were opened there was less blood. The Chemical Analyzer himself had raised this suspicion through a written communication dated 15.9.2020. (Page-354, Compilation "C")

The police then had acted on that letter and sent their own letter dated 7.10.2020 to the Medical Officer, Borivali Postmortem Center seeking their opinion as to why there could be less blood on the articles. (Page-383, Compilation "C") There was a specific reference to the clothes of the deceased. The police themselves were not sure as to why there was less blood on her clothes.



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**vii]** **No mention of damage to the door in the spot panchnama** : The statement of Ankita at page No.223 in compilation "B" mentions that Himanshu had told her that the deceased had locked herself in a bedroom and that she was crying. The statement of the friends mention that Rohan forcefully opened the door. In that case it was expected that there was some damage to the lock or to the door but the spot panchnama does not show any such damage.

**viii]** **Discrepancy pointed out by FSL :** There is one more glaring feature which requires some consideration. The postmortem report mentions in column No.21 that the anal swab and vaginal swab were taken for examination. The description of the Medical Officer's letter to the FSL mentions that the 'vaginal swab' and 'anal swab' were sent but the exhibit found in the envelope were 'vaginal smear on slide' and 'anal smear on slide'. The FSL sought explanation regarding this discrepancy and they addressed a letter dated 20.8.2020 to the Medical Officer, Borivali postmortem center. Said letter is at page Nos.355 & 357 in compilation "C". These two swabs were important in the context of the allegations.



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The Medical Officer responded by sending a letter dated 25.9.2020 and it was mentioned that vaginal swab and the anal swab were not taken but vaginal smear and anal smear were taken. It was mentioned that the form sent to the FSL inadvertently mentioned vaginal swab and anal swab and that the FSL should read it as vaginal smear and anal smear instead of vaginal swab and anal swab. (Page-344, Compilation "C") This discrepancy is also important in the context of the case. Because the C.A. Report at Page-347 in compilation "C" mentions that no male DNA was detected in those slides.

**ix]** The police themselves sent a letter dated 12.8.2020 at page No.338 in compilation "C" to the doctor conducting the postmortem examination as to why the body was nude. That is surprising because the police themselves had effected the seizure panchnama of her clothes. The clothes were kept on the stretcher. They were identified by Rohan Rai. If the police were already aware of seizure of the clothes then there was no occasion to ask the doctor as to why there were no clothes on the body.



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**x]** The Petitioner's daughter's laptop and mobile phone were important part of the evidence. They were seized and examined much belatedly on 17.6.2020 from custody of Rohan Rai. They were not seized during the spot panchnama of the flat conducted on 9.6.2020.

**39.** Thus, we find that there are too many glaring discrepancies which necessitated proper and substantive investigation under the provisions of Sections 154 to 173 of Cr.P.C.. That was not done in the present case. Therefore, we are of the considered opinion that this case deserves registration of FIR and investigation in a cognizable offence.

**40.** Though Shri Pasbola and the learned Public Prosecutor submitted that the Petitioner has an option to approach the Magistrate and pray for investigation under the provisions of Section 175 of the BNSS, we have noted history of this case. The investigation was carried out in two phases by the police. It was going on for almost more than six years. Therefore, in the facts of this case it would not be proper to ask the Petitioner to approach the Court of Magistrate and seek police investigation. As rightly



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submitted by Shri Ojha, the Magistrate has no power to direct the CBI to investigate into the offence. In this particular case, we are of the opinion that the police had sufficient opportunity to investigate the offence but they have not registered the FIR and have not carried out the investigation of a cognizable offence. Instead, they conducted investigation under the provisions of Section 174 of Cr.P.C.. which according to us was inadequate and insufficient in the facts of the present case.

**41.** Therefore, in this case, another investigating agency like CBI is required to investigate the offence. We agree with Shri Ojha that the Petitioner does not have any equally efficacious and effective remedy in this particular case except to seek investigation by CBI.

**42.** Shri Ojha had prayed that the investigation be carried out under the supervision of this Court. However, we are not inclined to accept that request. There is no reason to doubt the effectiveness of the investigation to be conducted by CBI.. We have no reason to assume that such investigation would not be fair, impartial and effective. Therefore, we are not accepting that



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particular request.

**43.** At the cost of repetition, we make it clear that we have not made any observations against any particular individual. That would be strictly within the realm of the investigation. We do not want to interfere with the investigation in any manner. The investigating agency shall have full freedom to investigate all aspects of this case in accordance with law. They shall not be influenced by any observations made in this order. We have noted the suspicious circumstances only to arrive at a conclusion that the registration of FIR and the investigation in cognizable offence is necessary.

**44.** The investigating agency, namely, CBI, shall have all the options open. At the appropriate stage they can add or delete the provisions of offences applied by them depending on what the investigation reveals. They will be at a liberty to file appropriate Summary if no offence is made out; but in that case the Petitioner will have a right to prefer a Protest Petition challenging the finding that no offence is made out. The Investigating Agency shall interact with the Petitioner and his family with sensitivity as they



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will have to remember the tragic incident in detail. At the same time care should be taken that no innocent person is harassed and the offenders, if any, are made to face the trial.

**45.** As a result of the above discussion, we pass the following order :

**:: O R D E R ::**

**i.** The officer attached to Central Bureau of Investigation [CBI], who is in-charge for Mumbai region, shall appoint a suitably experienced and senior CBI Officer as an Investigating Officer in this case.

**ii.** Such officer shall record the statement of the Petitioner and register the FIR.

**iii.** The Investigating Officer shall conduct the investigation regarding all aspects surrounding the circumstances in which the Petitioner's daughter lost her life.

**iv.** Nobody shall be treated as an accused unless in the opinion of the Investigating Officer there are sufficient grounds to raise reasonable suspicion against him depending on the material collected during the investigation.



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**v.** The investigation shall be carried out under the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023. If the offence is made out, appropriate report be filed before the competent Court.

**vi.** In case the investigation reveals that no offence is made out, then appropriate Summary be filed before the competent Court; but in that case, the Petitioner shall have a right to file the Protest Petition challenging such report.

**vii.** The concerned officers of Malvani police station, Mumbai shall hand over all the necessary papers and articles to the Investigating Officer of CBI.

**viii.** The Petition is disposed of in the aforesaid terms. With disposal of the Petition, all the connected applications are also disposed of.

(RANJITSINHA RAJA BHONSALE, J.) (SARANG V. KOTWAL, J.)

Deshmane (PS)



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