

(2023) 11 BOM CK 0017

Bombay High Court

Case No: Criminal Writ Petition No. 5943 Of 2021

Swapan Nripesh Bhattacharya

APPELLANT

Vs

State Of Maharashtra And
Others

RESPONDENT

Date of Decision: Nov. 10, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Code Of Criminal Procedure, 1973 - Section 174

Hon'ble Judges: A.S. Gadkari, J; Sharmila U. Deshmukh, J

Bench: Division Bench

Advocate: Meghashyam Kocharekar, Amit P. Ghag, M.H. Mhatre

Final Decision: Disposed Of

Judgement

A.S. Gadkari, J

1) Petitioner, father of late Soham Bhattacharya has filed present Petition under Article 226 of the Constitution of India, seeking direction to the

Respondents to further investigate/enquire into ADR No. 63 of 2017 registered with Respondent No.2-Bhandup Police Station dated 2nd May 2017,

regarding untimely death of his son and for its transfer to any other independent investigation Agency.

2) Heard Mr. Kocharekar, learned counsel for the Petitioner and Mrs.Mhatre, learned A.P.P. for Respondents-State. Perused entire record.

3) Record reveals that, ADR No. 63 of 2017 under Section 174 of Criminal Procedure Code was registered with Bhandup Police Station, Mumbai, as

per the information given by Essa Mohammad Gajnavi on 2nd May 2017 at about 3.00 a.m.. It was reported to the police that, Soham Swapan

Bhattacharya received a phone call on his mobile and thereafter he got tensed and in that condition he jumped from the window of 18th floor of his

residential premises. He was taken to Romeen Nursing Home at Gamdevi Road, Bhandup (W.), where the concerned doctor attached thereto

examined and declared him dead before admission. After lodgment of said ADR, the police immediately conducted Spot Panchanama and Inquest

Panchanama in the presence of panch witnesses and the body of deceased was sent for postmortem at Rajawadi General Hospital at Ghatkopar.

During the course of enquiry statements of 7 witnesses were recorded by the Investigating Officer including the statement of Petitioner i.e. father of

deceased. During the enquiry no suspicion against anyone was pointed out by the Petitioner. In the Postmortem Report the opinion as to cause of

death, as recorded by the concerned doctor is "injuries to vital organs, samples preserved for necessary analysis". On 25th March 2018 the

Investigating Agency received Viscera Report from the Forensic Science Laboratory and it was revealed that, it is not a case of poisoning. After

completion of enquiry, the Respondent No.2 submitted its report under Section 174 of Cr.P.C. to the Special Executive Magistrate and Assistant

Commissioner of Police, Bhandup Division, Mumbai.

3.1) The Special Executive Magistrate by its Order dated 15th October 2019 has accepted it. A copy of the said report was furnished to the Petitioner

on 7th January 2020 and the Petitioner has acknowledged the same.

4) Mr.Kocharekar, learned counsel for the Petitioner submitted that, the statement of prime witness i.e. Siddharth Jaiprakash Todi, who was

accompanying the deceased on the fateful day has been recorded by the police after a gap of about 2 years. He submitted that, the statements of

other three friends of deceased, who were present in his house on the fateful day were not immediately recorded and they were allowed to go to their

home by the police. That their statements have been recorded belatedly and therefore it indicates that, the Investigating Agency was not prompt

enough in conducting investigation/inquiry in to the untimely death of Soham Bhattacharya. He submitted that, the statement of watchman of the

building, who as per the prosecution tried to pacify Soham Bhattacharya on the 7th floor of the building, is not recorded. He submitted that, the

investigation carried out by the Respondent No.2 is incomplete and has been done in lackadaisical manner and the Investigating Agency has left

important loopholes in the investigation. He submitted that, the Order dated 15th October 2019 passed by the Special Executive Magistrate accepting

the Final Report in ADR No. 63 of 2017 under Section 174 of Cr.P.C. may be set aside and the investigation of the said ADR may be transferred to

any other Investigating Agency, other than the Respondent No.2.

5) Perusal of record indicates that, during the course of investigation of the said ADR the Respondent has recorded statements of 7 witnesses.

Admittedly (i) the Petitioner, i.e. father of deceased (ii) Madhumati Swapan Bhattacharya, i.e. mother of deceased, (iii) Ms.Sohini Swapan

Bhattacharya, i.e. sister of deceased and (iv) Ms.Asmita Animesh Bhattacharya, i.e. fiancée of the deceased, were not present at the time or prior to

commission of suicide by Soham.

5.1) It is the other three witnesses namely, (i) Mr.Essa Gajnavi, (ii) Mr.Rajat Mahajan and (iii) Mr.Siddharth Todi, i.e. the friends of deceased, were

accompanying him in the late night of 1st May 2017 till the incident in question occurred between 2.00 to 2.30 a.m. of 2nd May 2017.

5.2) The statement of Sohini Bhattacharya dated 5th May 2017 reveals that, at about 1.20 am of 2nd May 2017 she, Asmita Bhattacharya and

deceased Soham Bhattacharya had a conference call on mobile phone. The deceased informed her that at his place some persons were sitting. She

told him that, ask the said persons to leave the said house, as it is of his. They had conversation for about 10 to 15 minutes and thereafter the phone

was cut. She again gave a call to deceased at about 2.15 a.m. when he did not receive it.

5.3) The statement of Asmita Bhattacharya i.e. the fiancée of deceased was recorded on 5th May 2017. She has stated that, she and deceased were

supposed to marry with each other, with the permission of their respective family members. That, on 1st May 2017 at about 12.00 noon deceased

called her and told her that, he was going for lunch with his friend Siddharth Todi. Thereafter at about 00.23 a.m. deceased gave her a call and told

her that, they were having party. That Siddharth, his friend Essa Gajnavi and his friend were at the said party. At that time sister of Soham (deceased)

namely Sohini was on conference call. Sohini told Soham to take dinner. At that time deceased informed her that all of them had consumed Ganja.

Ms.Asmita and Ms.Sohini therefore started laughing. They had a discussion for about 10 to 15 minutes. She thereafter gave a call to Soham at about

1.30 a.m., however he did not accept it. However the subsequent call was accepted by Soham, whereupon she told him to have food. Soham replied

positively and thereafter the phone was cut.

5.4) Essa Mohammad Gajnavi (friend of deceased) in his statement dated 2nd May 2017 has stated that, on 1st May 2017 at about 9.00 a.m. he came

from his native place for an interview at I.I.T. Mumbai and was stationed at the house of Soham Bhattacharya (deceased) at Bhandup (W.).

His interview was on 2nd & 3rd May of 2017. Along with him, on 2nd May 2017 his friends including Rajat Mahajan were there. On 2nd May 2017 at

about 1.00 a.m. Soham brought "Ganja" and all of them smoked it. The consumption of Ganja had its effect on Soham and he started indulging

into over enjoyment due to it. All of a sudden he received a call on his mobile phone and thereafter he went under tremendous tension. He started

talking incoherently. All the friends present at his place tried to explain him and to pacify him. However, Soham was not in a position to listen to

anybody. All the persons present at the said spot forcibly made him to sit on a chair and pleaded with him to behave properly. However, all of a

sudden Soham got up and jumped from the sliding window of the said flat and died instantaneously.

5.5) The statement of other witness Rajat Sushil Mahajan was recorded on 9th May 2017. In his statement he has stated that, on 1st May 2017 he

met his friend Siddharth Todi at about 2.30 p.m.. Siddharth was accompanied by his friend Soham Bhattacharya (deceased). Siddharth introduced

Soham with Rajat. After completing their work at Andheri they started to proceed at the place of Soham at Bhandup. Soham insisted Siddharth and

Rajat to stay at his place. They reached his place at about 10.30 p.m. and called for food from online food provider. When they reached the place of

Soham, Soham's friend Essa and his friend Deep Ghosh were already present there. Thereafter all the said 5 persons smoked Ganja and had their

food. After dinner Siddharth spoke with somebody on mobile phone. He thereafter booked a cab for going to his place and left.

5.6) In his statement dated 1st April 2019 Siddharth J. Todi has stated that, prior to it the police had enquired with him three times and had recorded

his statements. Despite it on the said date he appeared before the police and on enquiry he recorded his statement.

He has stated that, he and Soham were friends since their childhood at Assam. Their relatives were also good friends of each other. Soham

(deceased) subsequently shifted to Pune/Mumbai for education and job. He completed his engineering at Bangalore. On 30th April 2017 he came to

Mumbai from Bangalore in search of job. He contacted Soham and went to his place at Beauty Hights, Bhandup (W) on 1st August 2004 for stay.

Soham was residing alone there. On 1st May 2017 in the morning they went to Andheri area in search of a new room for him. He gave a call to his

friend Rajat Mahajan. In the night at about 9.00 p.m. they came to Bhandup by a cab. When the car was stopped at Bandup petrol pump, Soham

informed them that, "he will bring Ganja" and returned within five minutes. They thereafter went to his house. At the house of Soham his friend

Essa Gajnavi and friend of Essa namely Deep Ghosh had came from Assam. They ordered their food from Zomato. He, Soham, Deep and Essa

smoked Ganja. Thereafter Soham sat in the kitchen, talking with his girlfriend. After 45 minutes Soham and Essa went downstairs. After sometime he

received a phone call from Rajat who informed him that Soham is trying to enter in the room of a person situated on 7th floor. He reached the said

place immediately. He saw Soham was knocking door of the said flat and was telling that, "he want to talk with aunty". The security guard

reached there. Due to fear of Soham the flat owner of the said house locked the door from inside. Rajat Mahajan left the place. Thereafter they went

to his house. He, Deep Ghosh, Essa Gajnavi and security guard started going to 18th floor by the lift. In the lift all of a sudden Soham pressed the neck

of security guard. He along with other friends somehow rescued the security guard. As Soham was under high influence of Ganja, he was not

controllable by one or two persons. After reaching 18th floor his friends tried to pacify him. Soham slept for two minutes and thereafter started

running helter-skelter in the said room by murmuring something. As Soham was not in a mood to listen to anybody, his friends detained him in the bathroom. Soham started banging on the door of the bathroom. Thereafter he opened the door. Soham came out of the bathroom in a wet condition.

Soham again started running in the house and therefore he and other friends tried to catch him. At that time, Soham ran in the kitchen and before anybody could realise anything, he jumped outside from it.

5.7) As noted earlier, the security guard and other persons noticed that Soham had fallen in the precincts of the said Society and thereafter on the basis of the complaint lodged by Essa Gajnavi, present A.D.R. is registered.

6) After perusing entire material available on record, it reveals that, on the fateful day Soham was under the influence of Ganja and was behaving in disorderly manner. It further appears that, due to the consumption of Ganja deceased was in the state of hallucination and in the said state of mind he committed suicide. The independent witness namely, Asmita Bhattacharya i.e. the fiancée of Soham has in unequivocal terms stated that, Soham told her at about 00.30 a.m. i.e. an hour and half prior to his jumping from 18th floor that, he had consumed Ganja.

7) After perusing entire record, we are of the considered opinion that, the Investigating Agency has not left any angle of investigation untouched and has properly investigated said A.D.R. No. 63 of 2017. According to us, the Respondent No.2 has properly investigated the said A.D.R.

It further appears from the record that, Soham committed suicide by jumping from his house under the influence of Ganja and according to us there cannot be any other facet to the said accidental death.

8) In view of the above discussion, we find that, there is not need to further investigate the said A.D.R. No. 63 of 2017 registered with Respondent

No.2 and to transfer it to any other independent Agency.

Petition is accordingly disposed off.