

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. ___ OF 2020

IN

CRIMINAL WRIT PETITION (ST.) NO. 4132 OF 2020

Arnab Goswami

.... Applicant

IN THE MATTER BETWEEN

Arnab Goswami

... Petitioner

Versus

State of Maharashtra and Others

...Respondents

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For Phoenix Legal

Advocates for the Applicant/Petitioner

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PROFOMA

<u>Office Notes. Office Memorandum of Coram appearance. Court's Orders or direction and Prothonotary's Orders.</u>	<u>Court's or Judge's Orders.</u>
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SYNOPSIS

Date	Particulars
26.05.2020	The Home Department of the State of Maharashtra addressed a communication dated 26 th May, 2020 to the Director General of Police, Maharashtra State stating that, FIR registered as C.R. NO. 59 of 2018 at Alibaug Police Station under section 306 r/w. 34 of IPC, to be transferred to the Crime Investigation Department for the purposes of 'reinvestigation'
06.11.2020	The Petitioner states that, he was unaware of the communication dated 26 th May, 2020 at the time of filing the present Writ Petition until the same was brought on record in the Criminal Writ Petition No. 1543 of 2020.
	The issuance of reinvestigation of a closed "A" summary report in relation to FIR 59 of 2018 dated 5th May, 2018 passed by the Home Department for the State of Maharashtra reeks malafide, malice, spiteful nature and vendetta of the political dispensation in the State of Maharashtra in the hands of the high and mighty people
	The Petitioner states that based on the communication dated 26 th May, 2020 the alleged reinvestigation has been commenced and is being conducted by the concerned Police Authorities without appropriate judicial sanctions/permissions
	The Home Department for the State of Maharashtra or any other government authority does not have the power to direct/order a reinvestigation or fresh investigation in a case where an A summary report is filed and the same is accepted by the Chief Judicial Magistrate. It is an admitted fact that, in the present case there wasn't any judicial sanction/permission granted for reinvestigation by the Chief Judicial Magistrate. This is borne out from the fact that, the Learned Chief Judicial Magistrate at Raigad-Alibaug

	That without a judicial sanction any reinvestigation is bad in law, ultravires and abuse of the process of law at the hands of State Instrumentalities. The said reinvestigation being conducted at the instance of the Home Department for the State of Maharashtra is nothing but a malicious attempt on part of the Respondents to harass the Petitioner
	The amendments sought are on facts that, the Petitioner became aware of the same, after the filing of the captioned Writ Petition. Hence, the present application.

POINTS TO BE URGED:

As set out in the present application.

ACTS APPLICABLE:

1. Indian Penal Code
2. Criminal Procedure Code
3. Constitution of India
4. Others, if any with the leave of this Hon'ble Court.

JUDGEMENTS:

Will be shared/tendered/compiled at the time of the hearing.

Advocate for the Applicant

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INTERIM APPLICATION NO. OF 2020

IN

CRIMINAL WRIT PETITION NO. OF 2020

Arnab Goswami

S/o. Manoranjan Goswami

Residing at: B-1701/1702

Raheja Atlantis CHS,

G K Marg, Lower Parel,

Mumbai 400 013.

Editor-In-Chief, Republic TV

...Applicant/Petitioner

In the Matter Between

Arnab Goswami

S/o. Manoranjan Goswami

Residing at: B-1701/1702

Raheja Atlantis CHS,

G K Marg, Lower Parel,

Mumbai 400 013.

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...Applicant/Petitioner

Versus

1. The State of Maharashtra)

Through Standing Counsel)

Bombay High Court)

2. Station House Officer)

Alibaug Police Station)

District Raigad)

Maharashtra)

3. Param Bir Singh)

Commissioner of Police)

Mumbai, Office of Commissioner)
Of Police, 4th Floor New)
Administrative Building)
L T Marg, Mumbai 400 001)

4. Union of India)
Through Standing Counsel)
Bombay High Court)

5. Akshata Anvay Naik)
901, Rishab Tower, Senapati)
Bapat Marg, Opp. Indiabulls)
Finance Centre, Prabhadevi)
Mumbai 400 025)

...Respondents

**THE APPLICANT/ORIGINAL PETITIONER ABOVENAMED MOST
RESPECTFULLY STATE AND SUBMIT AS HEREUNDER**

1. The Applicant is filing the present application, seeking to amend the captioned Criminal Writ Petition i.e. being Criminal Writ Petition No. ST. 4132 of 2020. The Applicant/Petitioner states that, amendments sought are on facts that, the Applicant/Petitioner became aware of the same, after the filing of the captioned Writ Petition.
2. On or around 6th November, 2020 the Applicant/Petitioner became aware about a communication dated 26th May, 2020 addressed by the Home Department of the State of Maharashtra to the Director General of Police, Maharashtra State stating therein that, FIR registered as C.R. NO. 59 of 2018 at Alibaug Police Station under section 306 r/w. 34 of IPC, to be transferred to the Crime Investigation Department for the purposes of 'reinvestigation'. The said communication dated 26th May, 2020 was part of the Criminal Writ Petition No. 1543 of 2020 filed by Adnya Naik. The said Criminal Writ Petition No. 1543 of 2020 was served/received/procured by the Applicant /Representatives/Advocates on or around 6th November, 2020. The Petitioner thus states that, he was unaware of the communication dated 26th May, 2020 at the time of filing the present Writ Petition and thereby is constrained to file the present application for the prayers as enlisted hereinunder.
3. After the end of Paragraph 18, Paragraph 18 (a) be added as follows:
"That, subsequently the Home Department of the State of Maharashtra by way of a communication dated 26th May, 2020 intimated the Deputy Inspector General of Police

stating that the FIR registered as Crime No. 59 of 2018, at Alibaug Police Station under Sections 306/34 of the IPC, was being transferred to the crime investigation department for the purpose of reinvestigation. A copy of the communication dated 26th May, 2020 issued by the Home Department of the State of Maharashtra for reinvestigation (In Marathi) along with the English Translation is hereto marked and annexed as “**Exhibit K1**” and “**Exhibit K2**”.

4. After the end of Paragraph 18(a), Paragraph 18(b) be added as follows:

The Petitioner states that, the concerned Police Authorities at Alibaug Police Station pursuant to a detailed investigation carried out by them had submitted an “A” summary report in the FIR No. 59 of 2018. A copy of the A Summary Report is hereto marked and annexed as “**Exhibit K3**”. The said A summary report dated 16th April, 2019 came to be accepted by the Chief Judicial Magistrate, Alibaug vide an order of even date (Exhibit B to the present Criminal Writ Petition). The Applicant states that, it was not open for the State to conduct a reinvestigation in the matter without, obtaining prior judicial sanction/orders/permission from the Chief Judicial Magistrate at Alibaug. The Applicant/Petitioner further submits that, the communication dated 26th May, 2020 seeking ‘reinvestigation’ in the matter is without judicial sanction, *ultravires* and bad in law. Hence, the following amendments ought to be allowed in the present Writ Petition.

5. After the end of Paragraph 18(b), Paragraph 18 (c) be added as follows:

“That, the issuance of reinvestigation of a closed “A” summary report in relation to FIR 59 of 2018 dated 5th May, 2018 passed by the Home Department for the State of Maharashtra reeks malafide, malice, spiteful nature and vendetta of the political dispensation in the State of Maharashtra in the hands of the high and mighty people. It is pertinent to note that, the State Instrumentalities are used in a malafide, malicious and with utmost spiteful nature against the Petitioner for posing questions and seeking answers from the people in power in the State of Maharashtra. The Petitioner humbly submits that, the issuance of reinvestigation on part of the Home Department without seeking appropriate legal sanction/permission is bad in law and *ultravires*.

6. After the end of Paragraph 18(c), Paragraph 18 (d) be added as follows:

“The Petitioner states that based on the communication dated 26th May, 2020 the alleged reinvestigation has been commenced and is being conducted by the concerned Police Authorities without appropriate judicial sanctions/permissions. This is borne out from the fact that, the Home Department vide the said communication dated 26th May, 2020 had ordered for FIR No. 59 of 2018 to be transferred to the Crime Investigating Department for the purposes of reinvestigation. The relevant extracts from the communication is hereinunder reproduced for ready reference:

“In respect of the above mentioned subject, you are hereby informed that crime No. 59/2020 registered at Alibaug Police Station Under Section 306/34 and Crime No. 114 of

2018 registered at Alibaug Police Station Under Section 302 are being transferred to Crime Investigation Department for the purposes of reinvestigation. Hence, you are requested to undertake the necessary steps for handing over the case for reinvestigation and report in respect of investigation already been made be submitted to the Government". It is further pertinent to mention that, the investigation now being carried out by the Police Authorities at Alibaug pursuant to the communication of the Home Department dated 26th May, 2020 is borne out from the fact that, even in the remand report dated 4th November, 2019 it was categorically admitted by the Investigating Officer that the nature of the investigation pursuant to the A Summary Report is in the nature of 'reinvestigation'. A copy of the Remand Report of the Petitioner dated 4th November, 2020 is hereto marked and annexed as **"Exhibit K4"**

7. After the end of Paragraph 18(d), Paragraph 18 (e) be added as follows:

"The Petitioner humbly submits that, the Home Department for the State of Maharashtra or any other government authority does not have the power to direct/order a reinvestigation or fresh investigation in a case where an A summary report is filed and the same is accepted by the Chief Judicial Magistrate. It is an admitted fact that, in the present case there wasn't any judicial sanction/permission granted for reinvestigation by the Chief Judicial Magistrate. This is borne out from the fact that, the Learned Chief Judicial Magistrate at Raigad-Alibaug, heard the Respondent's remand application at length on 4 November 2020 and rejected police custody vide an order of even date. In fact, the Learned Chief Judicial Magistrate at Raigad-Alibaug observed in the said order that *"...as no concrete proof /evidence found against the accused therefore "A" Summary report was submitted on 16.04.2019 and the same is approved by Court. The said report is till today not challenged by the complainant or any other person. As also the same is not set aside by Hon Higher Court. Therefore, the said "A" Summary report of Crime Registration No. 59/2018 is existing till today.*" The Learned Chief Judicial Magistrate at Raigad-Alibaug was further pleased to observe that *"...Without touching this report Investigating Officer Shri Shaikh has started fresh investigation with regard to the incident of 05.05.2018. It is not noticed that investigating officer Shri Shaikh has obtained permission of Court. From his application dated 15.10.2020 it is noticed that he has only submitted report to the Court that as per section 173(8) of Criminal Procedure Code he has started further investigation. In the report he has stated that he has received order for the said investigation work. The said report is only perused and got filed by the Court. It is not noticed from this report that permission of court is obtained anywhere.*" A copy of the order dated 4th November, 2020 passed by the Ld. Chief Judicial Magistrate is hereto marked and annexed as **"Exhibit K5"**.

8. After the end of Paragraph E of Grounds, Paragraph EE be added as follows:

"Because after the Communication of 26th May, 2020, the police authorities commenced their reinvestigation. On 15th October, 2020 the concerned investigating officer applied to the Ld. Chief Judicial Magistrate at Alibaug seeking permission to reinvestigate the captioned FIR No. 59 of 2018. It is pertinent to note that, the application seeking permission

was merely filed before the Ld. Chief Judicial Magistrate and however, there were no orders passed thereunder. Thus, the “A” Summary Report dated 16th April, 2019 as accepted is valid and subsisting till date. It is submitted that without a judicial sanction any reinvestigation is bad in law, ultravires and abuse of the process of law at the hands of State Instrumentalities. The said reinvestigation being conducted at the instance of the Home Department for the State of Maharashtra is nothing but a malicious attempt on part of the Respondents to harass the Petitioner .

9. After the end of Paragraph EE of Grounds, Paragraph EEE be added as follows:

“Because the power to reinvestigate or to cause fresh investigation, is based on judicial sanction and that the remand application evidently states that, on the basis of communication dated 26th May, 2020 an ordered reinvestigation took place, Hence, the reinvestigation ordered by the Home Department of the State is ultravires, without due sanction and bad in law”.

10. After the end of Prayer Clause (c), the following Prayer be added as (cc) and (eee) as follows:

(cc) That, this Hon’ble Court be pleased to issue a writ of certiorari and/or any other writ of similar nature and/or direction/order to quash and set aside the communication dated 26th May, 2020 , of the Home Department of the State of Maharashtra addressed to Deputy Inspector General of Police for the purposed of reinvestigation of FIR registered as C.R. No. 59 of 2018 under section 306/34 of IPC. declare the same as ultra vires.

(eee) Pending the final hearing and disposal of the Writ Petition, this Hon’ble Court be pleased to grant stay of any investigation in the nature of reinvestigation in \ the FIR No. 59 of 2020.

Ad-interim reliefs in terms of clause (eee)

PRAYER

- a. That the present amendment application be made absolute and the Petitioner be allowed to carry out changes in the present Writ Petition, with the leave of this Hon’ble Court.
- b. Such further orders and/or directions may be passed by this Hon’ble Court deems fit and proper in the fact and circumstances of the present case.

FOR PHOENIX LEGAL
Advocate for the Petitioner

Petitioner

VERIFICATION

I, Arnab Ranjan Goswami, an adult, Indian Inhabitant, residing at B-1701/1702 Raheja Atlantis CHS, G K Marg, Lower Parel, Mumbai 400 013, the Petitioner abovenamed, do hereby solemnly declare that what is stated in the abovementioned paragraphs is true to my knowledge and is stated on information and belief, which I believe to be true.

Solemnly declared in Mumbai)

This day of November 2020)

Petitioner

FOR PHOENIX LEGAL
Advocate for the Petitioner.

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... Respondents

INTERIM APPLICATION

Dated this ___ Day of November, 2020

PHOENIX LEGAL
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