

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.423 OF 2021
WITH
CRIMINAL APPEAL NO.444 OF 2021**

Father Stan Swamy ...Appellant
vs.
The State of Maharashtra and Another ...Respondents

Mr. Mihir Desai, Sr. Advocate i/b. Mr. Mihir Joshi, for the Appellant.
Mr. Anil Singh, ASG a/w. Mr. Sandesh Patil, for Respondent-NIA.
Mr. Deepak Thakre, P.P. a/w. Mr. J.P. Yagnik, APP for the State.
Dr. Ian D'Souza, Medical Director, Holy Family Hospital, Bandra present through VC.

**CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.**

**DATE : JULY 05, 2021
(THROUGH VIDEO CONFERENCING)**

P.C.:

. Not on board. As the praecipe was moved, in the morning session, for urgent circulation, taken on board.

2. Heard Mr. Mihir Desai, learned senior counsel for the appellant and Mr. Anil Singh, learned ASG for the NIA.

3. Dr. D'Souza, the Medical Director, Holy Family Hospital, Bandra, wherein the appellant has been admitted, appeared before the Court through video conferencing. We record with a

heavy heart that Dr. D'Souza informed the Court that the appellant Father Stan Swamy passed away today at 1.24 p.m. Dr. D'Souza further informed that the appellant had suffered cardiac arrest.

4. Mr. Desai, the learned Senior Counsel submits that in pursuance of the order of this Court (Coram:- S.S. Shinde & N.R. Borkar, J.) dated 28th May, 2021 Father Stan Swamy, as per his desire, was admitted in Holy Family Hospital, Bandra. The appellant was provided best of the treatment at Holy Family Hospital, Bandra. Despite best of the treatment and efforts of the medical team Father Stan Swamy passed away.

5. In the order dated 28th May, 2021 this Court had recorded inter alia as under:-

As already observed the appellant is of 84 years of age and while hearing this appeal on 21st May, 2021, this Court has interacted with the appellant through video conferencing and asked his choice, whether he want to take treatment in the J.J. Hospital or in any other hospital of his choice including Holy Family Hospital. In that view of the matter and in view of the submissions made across the bar by Mr. Mihir Desai, learned Senior Advocate appearing for the appellant and averments in the additional affidavit on behalf of the appellant, we are of the view that the

appellant can be given choice of being admitted in Holy Family Hospital at Bandra for treatment for a period of 15 days from the date of his shifting to said hospital.

14. *Accordingly, the respondents and in particular Respondent No. 2, are directed to shift the appellant to Holy Family Hospital at Bandra for treatment immediately, and preferably during the course of day.*

15. *As submitted by Mr. Mihir Desai, learned Senior Advocate appearing for the appellant during the course of arguments, the appellant will bear all the expenses for his treatment in the said hospital.*

16. *Keeping in view the age of the appellant and his ailments we request the administration of the said hospital to provide one attendant continuously to look after the appellant.*

17. *Father Frazer Francis Mascarenhas SJ who is a retired Principal of St. Xaviers College, is allowed to meet the appellant in the said hospital, subject to protocol of the said hospital.*

6. By subsequent orders, based on the medical records, the stay of Father Stan Swamy in Holy Family Hospital has been continued, from time to time.

7. Mr. Desai submitted that in view of the unfortunate death of Father Stan Swamy, now the authorities may be directed to handover the body of Father Stan Swamy to father Frazer

Francis Mascarenhas SJ, retired Principal of St. Xaviers College, who was allowed to meet the appellant in the said hospital by the aforeextracted order dated 28th May, 2021. Mr. Desai, further submits that the appellant was a Priest and had no family.

8. Mr. Mihir Desai, learned senior counsel for the appellant, would further urge that in view of the unfortunate development in the intervening period and the fact that the appellant was admitted in the hospital by the direction of this Court, the request of handing over the body of the deceased-appellant may not be relegated to the concerned Court and it would be expedient to issue proper directions by this Court.

9. Mr. Anil Singh, learned ASG and Mr. Deepak Thakre, learned PP state that they have no objection to hand over the body of Father Stan Swamy to Father Frazer Francis Mascarenhas SJ for performing funeral.

10. Mr. Thakre, learned PP, however, submitted that, as per his instructions from the prison authorities, it is necessary to draw inquest on the body of the deceased and conduct postmortem examination before the body of the prisoner is handed over for performing last rites.

11. We find that the submission made on behalf of the appellant is reasonable. The authorities can be directed to handover the body of the appellant to Father Frazer Francis Mascarenhas SJ after all the requisite steps in accordance with the governing rules and prison manual are taken.

12. In view of the aforesaid submissions and the fact that the appellant had been admitted in Holy Family Hospital pursuant to the order of this Court dated 28th May, 2021, we deem it appropriate to direct the State Authorities to conduct the inquest and postmortem examination and other requisite formalities forthwith and in any event during the course of the day. Mr. Thakre, learned PP assures the Court that the requisite steps would be taken during the course of the day.

13. We, therefore, direct that Respondent No. 2 and the officers of the State Government shall take all the necessary steps including drawing of inquest and holding of postmortem examination on the body of the deceased-appellant during the course of the day and, after completion of requisite formalities, hand over the body of the appellant to Father Frazer Francis Mascarenhas SJ.

14. We hereby make it clear that all the necessary inquiries, including the inquiry under section 176 (1-A) of the Code of Criminal Procedure, 1973, which are required to be made in accordance with law, on account of the death of the appellant in custody, shall be made by the Competent Authorities. This order may not be construed as an expression of opinion on any of the relevant issues of the matter.

15. Necessary information be given to the NIA Court.

16. Dr. D'Souza further informed the Court that Father Stan Swamy, who was Covid positive, had recovered from the said infection and was certified to be Covid Negative.

17. In this backdrop, we record the statement of Mr. Mihir Desai that the funeral of Father Stan Swamy will be held in Mumbai in conformity with the prevailing standard operating procedure, in the wake of pandemic.

18. Mr. Mihir Desai further submits that the appeal may be posted for consideration as he intends to make certain submissions.

19. At the request of the learned counsel for the parties, list on 13th July, 2021. On the scheduled date the Respondents shall produce the record pertaining to the medical condition and treatment of the appellant.

20. All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)