

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4662 OF 2015

Dhaneshwar S/o Shankar Dhokle,
R/o. 43/2 Kharadi, Chandannagar,
Pune-14

...Applicant

versus

1) The State of Maharashtra,
Through the Police Inspector,
Kotwali Police Station,
Ahmednagar, District Ahmednagar

2) The Superintendent of Police,
Ahmednagar

...Respondents

.....
Mr. V. D. Sapkal, Advocate, for applicants
Mr. S. R. Palnitkar, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 8th SEPTEMBER, 2015

ORAL ORDER :

This application is by the Police Inspector and in charge of the Police Station in which custodial death has occurred.

2. The facts as are necessary for deciding the present application are as under :

The staff, who was working under the jurisdiction of the present applicant when he was posted as in charge Police Inspector

of Kotwali Police Station, Ahmednagar, has taken into custody of Nitin @ Bhau Sathe at about 6-00 a.m. on 27/05/2015 as is apparent from station diary entry to that effect.

3. Thereafter, without complying with the formalities of arrest and his production before learned Judicial Magistrate, First Class, he was kept in detention till the time of his death, which is recorded to be at around 5-00 p.m.

4. The said deceased Nitin @ Bhau Sathe was taken into custody on suspicion and he remained in custody of the present applicant being Police Inspector of Police Station from morning 6-00 a.m. till his death.

5. The station diary entries further reflects that the present applicant was in charge of entire station between 9-30 a.m. to 11-15 a.m. It is reflected from the record that he instructed crime detection branch/staff to interrogate him. Same speaks of the fact that it was well within his knowledge that the deceased was detained, who should have been produced before the Judicial Magistrate, First Class at the first instance, which was rather not complied with but was subjected to third degree treatment.

6. It is further required to be noted here that the said Nitin @ Bhau Sathe when was reported to be dead by staff from detection branch, the present applicant, in stead of providing him medical aid/ to take appropriate steps, has tried to tamper with the record of police station by directing to take incorrect entries in the station diary and has also *prima facie* issued incorrect instructions to his subordinate staff so as to form a picture that the said Nitin @ Bhau has died because of his own act of trying to escape away from police station, which fact admits his illegal detention.

7. So far as the body of deceased Nitin @ Bhau Sathe is concerned, the same is having in all 21 external injuries and 3 internal injuries and reason cited for death appears to be "head injury in the form of subdural and subarachnoid hemorrhage with multiple injuries over body".

8. The case as is put forth by present applicant while seeking pre-arrest bail is that at the relevant time, he was in charge of three posts and as such, he cannot be blamed for the third degree treatment meted to deceased Nitin @ Bhau Sathe by the staff of crime detection squad working under his direction and supervision. In addition to above, he would urge that there is no direct evidence available against him of beating Nitin @ Bhau Sathe. According to

him, he has respect for law and in view of his meritorious service, he has received number of medals and his work is appreciated past. He further submits that he being public officer will not run away from the process of justice and from judicial process. He further submits that he shall abide by all terms and conditions, if he is released on bail.

9. The law laid down by the Apex Court in the matter of custodial interrogation and how to deal with the accused in the police custody is already reflected in the matter of ***D.K.Basu vs. State of West Bengal*** reported in ***(1997) 1 SCC 216***.

10. It is also required to be noted that the present applicant appears to have been admittedly in charge of police station and was in direct control of the same for the period between 9-30 a.m. to 11-15 a.m. and station diary speaks voluminous about the same. The applicant being head of the police station where the deceased was detained without following due process of law and died of third degree treatment meted out, in my opinion, being officer in charge was duty bound to control staff working under him. It is also required to be noted that it is hard to disbelieve that the person was detained and was subjected to third degree treatment was not within knowledge of present applicant, who was not produced before the Magistrate as per mandate of the law immediately after his detention.

11. There is strong *prima facie* case against the present applicant as the offence is non bailable and punishable with life imprisonment or death. Apart from above, the conduct of the present applicant after death of Nitin Sathe in his official capacity as Police Station Officer is also required to be taken into account. In view thereof, in my opinion, no case is made out, the application fails, same stands dismissed.

[N.W. SAMBRE, J.]