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

CRIMINAL APPLICATION NO. 6005 OF 2016

Vishwambar s/o Arjunrao Pallegad,
Age: 32 years, Occu: Service,
R/o Sirsala, Tq. Parali (Vaijnath),
Dist. Beed

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Station,
Parli (City), Dist. Beed
2. The Police Inspector,
Criminal Investigation Department,
Beed, Dist. Beed

..RESPONDENTS

Mr S. J. Salunke, Advocate for applicant;
Mr S. M. Ganachari, Addl. Public Prosecutor for respondents

CORAM : A.S. CHANDURKAR, J.

DATE : 25th November, 2016

ORAL ORDER :

The applicant has approached this Court under Section 438 of the Code of Criminal Procedure, 1973 as he apprehends arrest in connection with C.R. No.340 of 2016, registered at Parali City Police Station, for the offences punishable under Sections 306, 330, 331, 348, 353 read with Section 34 of the Indian Penal Code.

2. As per the first information report dated 29th September, 2016, the first informant, who is a Police Inspector, has stated that she was in-charge of making investigation into an incident of custodial death that occurred at

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Police Station, Parali. On 16th August, 2014, as per the report given by the applicant, while he was going along with his staff to the office of the Sub-Divisional Police Officer, Ambajogai, at about 5.30 p.m., he was informed by the D.B. Squad that an accused in the theft of motorcycle, who was brought to the police station, was being taken to the hospital for treatment. The applicant, therefore, went to the Government Hospital and learnt that a person named Tukaram Sambhaji Jogdand had been declared dead at about 7.30 p.m. and on that basis, an entry as regards accidental death was taken. Further investigation in the matter was handed over to Assistant Police Inspector A.D. Vispute. As the death had occurred during the course of custody, further investigation was directed by the senior authorities. The Sub-Divisional Magistrate thereafter inspected the site and conducted spot panchnama. Various registers as well as records of Close Circuit T.V. were also seized. The cause of death was shown as on account of asphyxia due to hanging associated with a head injury and other contusions over the body. On completion of preliminary inquiry, the informant found that the present applicant who was the Assistant Police Inspector of the concerned police station, along with other police officers were guilty of not taking proper steps in accordance with law, despite having custody of said deceased from 15th August, 2014 at about 7.30 p.m. till 16th August, 2014 till 4.00 p.m. The said person, who was arrested, had, on account of mental and physical torture committed suicide. On that basis, aforesaid offence came to be registered.

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3. Mr Salunke, the learned Counsel for the applicant submitted that the present applicant had been unnecessarily implicated in the present offence. The applicant was never in-charge of the police station as he was merely an Assistant Police Inspector. He was also not in-charge of the investigation with regard to theft of the motorcycle. The CCTV footage obtained by the Investigating Officer merely indicated the presence of the applicant at the police station and there was no material whatsoever to indicate that the alleged assault on the aforesaid person was by the applicant. Referring to the documents received under the provisions of the Right to Information Act, 2005, it was submitted that on 16th August, 2014, at about 1730 hours, the applicant had gone to attend the office of the Sub-Divisional Police Officer, Ambajogai. He also referred to the station diary entries at Sr. Nos. 39 and 40 recorded at 1905 hours and 1910 hours, to indicate that the applicant was in fact informed about the ill-health of the person with whom inquiry was being made. Reference was also made to the location of various officers on 14th August, 2014 and 15th August, 2014 to indicate that the applicant was at the headquarters at the relevant time. It was then submitted that Shri. Kasture was the Police Inspector in-charge of the concerned police station. As per the provisions of Section 36 of the Code of Criminal Procedure, 1973, a superior officer would be in-charge of the police station and as the applicant was not the said superior officer, he could not be fastened with any liability.

Referring to the provisions of Section 306 of the Indian Penal Code, it was submitted that there was no positive or overt act done by the present

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applicant so as to constitute abetment resulting in suicide. For said purpose, the learned Counsel placed reliance upon the judgment of the Honourable Supreme Court in **Gangula Mohan Reddy vs. State of A. P., 2010 Cr.L.J. 2110**. It was urged that as the investigation by the C.I.D. was complete and the present applicant had no previous antecedents, there was no need whatsoever for his custodial interrogation. It was submitted that the applicant was merely being made a scapegoat when, in fact, he had no role whatsoever to play in the alleged incident. The learned Counsel referred to the principles laid down by the Honourable Supreme Court in the matter of grant of anticipatory bail by placing reliance upon the judgments in **Siddharam Satlingappa Mhetre vs. State of Maharashtra & ors., AIR 2011 S.C. 312** and **Bhadresh Bipinbhai Sheth vs. State of Gujarat & anr., AIR 2015 S.C. 3090**. It was thus submitted that the applicant deserves to be protected as his arrest would cause serious prejudice to his career.

4. Mr S. M. Ganachari, the learned Addl. Public Prosecutor opposed the aforesaid application. He referred to the police papers to indicate that the investigation into the alleged incident was not yet complete and that there was ample material collected to indicate the complicity of the present applicant. According to him, after the custodial death of Tukaram Jogdand, the Sub-Divisional Magistrate had been directed to hold an inquiry and report in that regard had been received. This report clearly indicated the role of the present applicant along with other officials. He further submitted that Tukaram Jogdand had not been shown to be

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formally arrested, but still he remained in custody on 15th and 16th August, 2014. At this stage, the submission made on behalf of the applicant that he was not responsible in any manner whatsoever, could not be accepted and the entire prosecution case would be clear after completion of the investigation. He, therefore, submitted that the present application deserves to be rejected.

5. I have heard the respective Counsel for the parties at length and perused the police papers. I have also gone through the report dated 3rd July, 2015 submitted by the Sub-Divisional Magistrate with regard to inquiry in the incident. *Prima facie*, I find that there is substantial material on record on the basis of which it can be said that the present applicant is not entitled for grant of protection from arrest. The material on record indicates that Tukaram Jogdand was found in possession of a stolen motorcycle and he was, therefore, brought to the concerned police station on 15th August, 2014 in the evening hours. He was presented before the present applicant after which the applicant made certain queries with him. The owner of the motorcycle had come to the police station to lodge his report. The motorcycle was also brought to the police station. Said Tukaram Jogdand was not shown to have been formally placed under arrest. He remained in the police station in its lock-up room in the night of 15th August, 2014. Only on 16th August, 2014 in the evening hours, said Tukaram Jogdand was taken for medical aid at the Civil Hospital, Parali. He was declared brought dead and according to the Medical Officer, the death had occurred at about 5.00 p.m. on the same day. The body of the

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deceased indicated about ten external injuries and one internal injury on the head. On his neck, some ligature marks were also found. It is on this basis, that the un-natural death of said Tukaram Jogdand was reported, leading to holding of further inquiry. From the papers it is, therefore, clear that from 1930 hours on 15th August, 2014 till about 1600 hours on 16th August, 2014 said Tukaram Jogdand remained at the lock-up of the concerned police station without being arrested.

6. At this stage, it is not necessary to sift through the entire material collected and only a *prima facie* view as regards need for applicant's custodial interrogation is required to be taken. The CCTV footage, on the basis of cameras kept at the police station indicates that there were in all four cameras, out of which camera nos.1 and 3 were operative and camera nos.2 and 4 were inoperative. The footage indicates that said Tukaram Jogdand was brought before the applicant, after which a Constable took him towards the lock-up. Merely because the said footage does not indicate any acts of assault by the present applicant would not mean that the applicant was, in no manner concerned with the custodial death of said Tukaram Jogdand. The statement of one Shaikh Alim, who was the owner of the motorcycle that was said to have been stolen indicates that he had been to the concerned police station on 15th August, 2014 for lodging a report in that regard. The applicant was present there. The vehicle owner was informed that his motorcycle as well as the alleged thief had been found. He has stated that after some time, two Constables and the alleged thief – Tukaram Jogdand were brought to the police station and the said

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thief was presented before the applicant. Similarly, the statements of members of the Detection Branch Squad corroborate the aforesaid statement. The statement of Umashankar Kasture, the Police Inspector of the concerned police station indicates that though he had a talk with the applicant in the evening of 16th August, 2014, he was not informed about the aforesaid incident by the applicant. He got the information from members of the Detection Branch Squad. When he reached the police station, he learnt that the dead body of Tukaram Jogdand had been taken to the Civil Hospital. Thus, the statements recorded reveal that in the presence of the applicant, said Tukaram Jogdand had been produced on 15th August, 2014 and without he being formally placed under arrest was detained in custody for the entire day on 16th August, 2014. He was brought dead to the Civil Hospital in the evening. Considering aforesaid material available on record, the same in my view is sufficient to deny pre-arrest protection to the applicant and the matter requires detailed investigation.

7. The principles in the matter of grant of anticipatory bail laid down by the Honourable Supreme Court on which reliance was placed by the learned Counsel for the applicant themselves indicate that if the proposed accusation is not actuated by *mala fides* and the offence in question is serious in nature, such protection can be denied. With a view to complete the entire chain of events leading to the un-natural death of Tukaram Jogdand, his custodial interrogation is warranted. Though it is true that the applicant is in service, that by itself cannot be a ground to extend protection so as to pre-empt his arrest in the facts noted herein above.

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8. Hence, for the aforesaid reasons, the application stands dismissed. It is, however, clarified that observations made in this order are *prima facie* in nature and only for deciding the present application.

(A.S. CHANDURKAR, J.)

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