

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1208 OF
2016
WITH
CRIMINAL APPLICATION NO.724 OF 2016**

Vikas Ganpat Dhas

.... Applicant

versus

The State of Maharashtra

... Respondents

Mr.A.P. Mundargi, Sr.Counsel i/b. Mr.Abhishek Yende for applicant.
Ms.Veena Shinde, APP for the respondent/State.
Mr.Akshay Gosavi i/b. GMS Legal for Intervenor.
Mr.Suhas Laxman Gosavi, Dy.S.P., CID, Crime, Satara Unit.

**CORAM : SMT.SADHANA S.JADHAV, J.
DATE : 07th SEPTEMBER, 2016.**

PC. :

1. Heard. This is an application under section 438 of the Code of Criminal Procedure. Applicant herein apprehends his arrest in Crime No.332 of 2016 registered at Karad City Police Station, for offence punishable under sections 302, 365, 324, 386, 323, 506 r/w 34 of the Indian Penal Code, for having caused the custodial death of one Mr.Dashrath @ Raosaheb Laxman Jadhav, who was arrested in Crime No.257/16 registered at Karad City

Police Station, for the offence punishable under section 379 r/w 34 of the Indian Penal Code.

2. It is the case of prosecution that the accused Arjun was produced before the Judicial Magistrate First Class, Karad on 24th May, 2016. The request for police custody was granted. Accused was remanded to police custody till 06th June, 2016. In the remand report, the names of the other accused had surfaced. The present applicant was the investigating officer in C.R.No.257/16. It is the case of prosecution that on 17th June 2016, while in police custody, Mr.Dashrath @ Raosaheb Laxman Jadhav was assaulted by API Kankadki and the present applicant at Karve Naka Police Chowky.

3. On 20th June 2016 Mr.Hiraji @ Anil Dashrath Dikole lodged a report at Karad City police station, alleging therein that on 17th June, 2016 he had heard that the police have come in the said village i.e. Ghoti. Mr.Dashrath @ Raosaheb Laxman Jadhav, who happens to be his brother in law had informed him that the police have come to the village to arrest him. He requested the first informant to accompany him. That the first informant had obliged and they had gone on the motorcycle of the first informant. A

Swift car had intercepted them. Four persons had alighted from the Swift car. They had enquired about the identity of Mr.Dashrath @ Raosaheb Laxman Jadhav. He had accompanied his brother in law in the Innova car at the request of the people who had come in the Innova car and the Swift car. They were taken to Karve Naka Police Chowky. That his brother in law was brutally assaulted with sticks and belt. He had seen bleeding injury sustained by his brother in law. According to him the present applicant had gone to Karve Naka Police Chowky and had disclosed that, although he was on leave he had come to the police station. That the victim Mr.Dashrath @ Raosaheb Laxman Jadhav had succumbed to the injuries immediately. The body was sent for post mortem and the post mortem report indicates that the deceased had sustained severe injuries all over his body. It is the specific allegation of the first informant that, initially the applicant and his colleague Mr.Kankadki had assaulted Mr.Dashrath @ Raosaheb Laxman Jadhav in the afternoon at about 02.00 p.m. and thereafter at 11.30 p.m. on the same day. The first informant was also assaulted by the police and was detained till 19th June 2016 and therefore he lodged the report on 20th June 2016.

4. Learned senior counsel on the basis of instructions and documents has submitted that the applicant had filed an application seeking leave on 14th June 2016 which was granted after office hours on 15th June 2016. It is specifically contended that the applicant was admitted in City Medical Centre at Karad on 17th June 2016. He was discharged on 18th June, 2016. It also shows that the ECG of the applicant was taken on 17th June 2016. It was also revealed that he did not have any heart disease and therefore was given physiotherapy for spinal pain. The brother in law of the present applicant had filed an affidavit before the Sessions Court and has contended that on 17th June, 2016 the applicant was at Kolhapur and that he was in need to be taken to the hospital. The brother in law Mr.Uttam Patil had been to Kolhapur and at the request of the applicant, he was brought to the City Hospital at Karad. That they had travelled in Swift Desire car bearing registration No.MH-09-CL-0909. That while they were in transit, the applicant alleged to have vomited and was not keeping well. It is specifically contended that they had been to residential house of the applicant, which is adjacent to Karve Naka Police Line.

5. Learned APP has submitted that the car mentioned in the affidavit was seen at Kini Toll Naka at 06.18 p.m. That distance between City Medical Centre and Kini Toll Naka is almost 51 Kms. However, the time of admission is shown as 06.45 pm. The CCTV footage of Kini Toll Naka shows that the Amber Colour Beacon lamp was seen installed in the car belonging to Mr.Uttam Patil.

6. It is pertinent to note that, in the affidavit itself, he has stated that he is a hotel owner and owns a hotel at Kolhapur. In fact, it appears that the Beacon lamp was installed in the car on the front side, only to mislead the Toll Naka attendant. The applicant has raised a specific plea of alibi. The plea of alibi cannot be considered at the stage of bail for the simple reason that, firstly, there are eye witnesses to the incident. The first informant himself is the eye witness. Secondly, it cannot be denied that the applicant was the investigating officer in Crime No.257/16. Thirdly, although he was at Kolhapur, he had chosen to get admitted in a hospital at Karad on the same day of the incident i.e. 17th June, 2016. Fourthly, there are statements of witnesses, who happen to

be the employees of the present applicant, which clearly indicate his presence at Karve Naka Police Line on 17th June 2016. The statement of the hospital attendant also shows that on 17th June 2016, he was specifically instructed that a VIP patient is to be admitted and to make all possible arrangements. The applicant was administered Saline by the hospital attendant. All this would clearly indicate that, there has been tampering of evidence by the present applicant. The statement of eye witness cannot be ignored at this stage. There is a specific averement in the First Information Report that the applicant had disclosed to the first informant that although he was on leave, he had to attend Karve Naka Police Chowky at the relevant time.

7. The applicant has fabricated documents to plead alibi at the time when the deceased was in custody. Custodial deaths are on the rise. The documents are fabricated in such a manner that no stone is left unturned to see that the factual position is not brought before the Court. Custody by police should in fact ensure safety whereas the situation is otherwise. Hence no sympathy or leniency can be shown to people who take recourse to brutalities

and third decree interrogation for their own benefit. People who are entrusted with the work of law and administration have violated the same in discharge of their official duties.

8. In the cases of custodial death, it is commonly seen that the police tamper with the evidence at the very initial stage. In the present case, the applicant has specifically created grounds to plead alibi at the time of incident. The alibi cannot be considered at this stage. Instead the plea of alibi is **falsified** by the investigating agency. There is sufficient incriminating material against the applicant. Hence, he is not entitled to the discretionary relief under section 438 of the Code of Criminal Procedure. The application being sans merit, stands rejected.

9. It is made clear that the observations made herein are prima facie in nature and shall not be considered at the stage of trial.

(SMT.SADHANA S.JADHAV, J.)