

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

8 CRIMINAL APPLICATION NO. 1324 OF 2017

RAJENDRA BHAGCHAND AVHAD
VERSUS
THE STATE OF MAHARASHTRA AND ANR

Shri. N.C. Garud, Advocate, for applicant.

Shri. S.M. Ganachari, Additional Public Prosecutor, for
respondent Nos.1 and 2.

Coram: T.V. NALAWADE, J.

Date: 17 March 2017

ORDER:

1) The application is filed for the relief of anticipatory bail. Both the sides are heard.

2) The crime is registered against the applicant for offence punishable under sections 342, 306, 34 etc of the Indian Penal Code. At the relevant time the applicant was working as Police Constable in Shirdi Police Station, District Ahmednagar. On that date one boy aged about 16 years viz. Kiran Ashok Rokde was taken in custody by police as there was allegation of pick pocketing against

him. He was kept in lock up of this police station on 31-3-2016. When the boy was handed over, the present applicant was doing duty of lockup guard. The said boy was having leather belt. The articles which can be used to cause harm to himself or to others were not taken away from the boy. When the boy was aged about 16 years he was kept in lock up. The boy was found, which according to police, in a position of attempting to commit suicide and so he was shifted to hospital at 12.40 p.m. There the boy was declared as dead at 14.17 hours. The boy was kept in lock up at 11.55 hours.

3) The post mortem was conducted on 1-4-2016 at 12 noon. Early signs of decomposition was noticed in the form of marbelling of veins over both lateral aspect of trunk, both upper arms and upper limbs. There were external injuries like abrasion over left lateral aspect of neck, over right posterior-lateral aspect of neck, over right posterior-lateral aspect of neck and there were contusions over lower lip on left side. On dissection of neck no evidence of fracture of hyoid bone, thyroid cartilage and cricoid cartilage was noticed. The aforesaid

injuries were ante mortem in nature and were caused by hard and rough object. The Medical Officer who conducted the post mortem did not give opinion regarding cause of death and so the organs were preserved for histopathological examination. There is histopathological report but surprisingly in this report also the cause of death is not mentioned.

4) The record shows that the concerned police station made an attempt to show that attempt was made by the boy to commit suicide in the lock up having some grills by using the belt. It can be said that it is a custodial death.

5) It is the contention of the applicant that he had left the police station after handing over the charge at about 12.00 noon and he has no concern if something happened after handing over the charge by him to one Harischandra Mane. This contention is not acceptable at this stage. The fact remains that the boy aged 16 years was handed over to the present applicant and the present applicant kept him in lock up with article like belt which,

according to police, could have been used for committing suicide.

6) Learned counsel for the applicant submitted that, one Shaikh Rajjak, who was working as Police Constable in the police station at the relevant time, is granted relief of anticipatory bail by the Sessions Court in Criminal Misc. Application No.16/2017 and so on the ground of parity the relief can be granted to the present applicant. The record shows that the same learned Judge of the Sessions Court has refused the relief to the present applicant. In any case, the aforesaid things show that there is some mischief. Apparently attempt was made to create show of attempt to commit suicide of the said boy. In such a case, custodial interrogation is a must. Truth needs to come out and that can happen only if persons are arrested and independent persons make custodial interrogation of such staff. There is clear possibility that death of the said boy was caused by the staff. When the said boy was apparently juvenile, had not completed 18 years of age (there is school leaving certificate in this regard) it was not open for the present applicant to keep

him in lock up and the illegality starts from there. The submission that the present applicant acted as per the directions of the superiors cannot be accepted in such a case. This Court holds that discretionary relief of anticipatory bail cannot be granted in favour of the applicant. To restore the faith of the people in the police machinery such instance cannot be taken lightly. Thorough investigation needs to be made and every person responsible for the death of the boy needs to be booked. That can become possible only if there is custodial interrogation of the persons like present applicant. The application stands rejected.

Sd/-
(T.V. NALAWADE, J.)

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