

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

7 CRIMINAL APPLICATION NO. 1377 OF 2017

UDDHAV S/O. MAROTI PANCHAL
VERSUS
THE STATE OF MAHARASHTRA AND ANR.

Shri. Shrinivas H Panchal, Advocate, for applicant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent No.1.

Coram: T.V. NALAWADE, J.

Date: 10 April 2017

ORDER:

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

2) This Court has perused the papers like the order made by the learned Judicial Magistrate making order of inquiry under section 202 of the Code of Criminal Procedure and then making order of issue process for offences punishable under sections 302, 201, 34 of the Indian Penal Code.

3) There is allegation that one Dipak Shinde was murdered by present applicant and other police staff of Hadgaon Police Station in one incident dated 25-4-2012. There are statements of eye witnesses showing that the deceased was brutally assaulted in the police station and during assault his head was hit against hard substance. Due to that he sustained injury to the neck and he died due to the injuries.

4) The learned counsel for the applicant has mainly relied on the so called dying declaration of the deceased shown to be recorded by Executive Magistrate. In the present matter it is custodial death and apparently the death took place due to the injuries caused by the police officers including present applicant to the deceased in the police station when he was not involved in any crime. The submissions made show that the learned Magistrate ought to have made order of investigation under section 156(3) of the Code of Criminal Procedure so that the reason behind the assault could have been also ascertained. Though that record is not there, it is clear that the death took place due to assault on the deceased

by the police officers of aforesaid police station including present applicant.

5) The material collected shows that the present applicant was on duty on that date. There is no record whatsoever with the applicant to show that he was not present in the police station at the relevant time. The record shows that the Sessions Court rejected the revision in March 2015. It appears that unfortunately the Sessions Court had entertained the revision against the order of issue process and for some time there was stay. These circumstances show that only because the present applicant is a police constable he got protection from everybody. There is clear possibility of creation of false record including record of dying declaration and that will have to be ascertained by the Sessions Court during trial which can be done on the basis of injury found on the dead body. When the incident took place on 25-4-2012 the applicant is not yet arrested and it appears that there is standing non bailable warrant (NBW) against the present applicant. When there is standing NBW there is something more than mere apprehension of arrest in the crime and

this Court is expected to presume that the learned Magistrate had applied mind. Thus, when there is such NBW this Court is not expected to grant protection to the person like present applicant. This Court holds that no relief can be granted to the applicant like granting of anticipatory bail. The application stands rejected. The observations made are only for the present purpose.

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

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