

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

911 CRIMINAL APPLICATION NO. 1511 OF 2017

ASHOK SUBHASH NIKAM
VERSUS
THE STATE OF MAHARASHTRA

Shri. A.K. Bhosale, Advocate, for applicant.

Shri. S.W. Munde, Additional Public Prosecutor, for
respondent.

Coram: T.V. NALAWADE, J.

Date: 6 April 2017

ORDER:

1) After advancing arguments exhaustively by the learned counsel for the applicant when this Court expressed that the Court is not inclined to grant the relief, the learned counsel, on instructions, submitted that he wants to withdraw the application. The application is disposed of as withdrawn.

2) While hearing the present matter this Court came across few serious things which need to be taken care of by the District Superintendent of Police Aurangabad as a superior officer.

3) On 24-1-2017 Police Constable Nikam bearing Buckle No.72 helped to escape the main accused Santosh More of Crime No.27/2016 registered in Gangapur Police Station for offences punishable under section 302 read with 34 of the Indian Penal Code. His bail application was disposed of as rejected in the past. On 24-1-2017 accused Santosh was to be produced before the Judicial Magistrate Vaijapur and Police Constable Nikam was discharging his duties. It is a fact that on that date from Court Nikam took this accused in a private car of the accused with other accused and the wife of the accused to the residential place of the accused from where he escaped.

4) The things do not stop there. Investigating Officer, Police Inspector Shri. Aniruddha S. Nandedkar was investigating the crime which was registered against Nikam for offences punishable under sections 225, 225A etc. of Indian Penal Code. Though crime under section 225 of the Indian Penal Code is non bailable offence, it appears that the investigating officer did not seek police custody of Constable Nikam. In open Court the investigating officer has submitted that he had not

requested for police custody and so Nikam was committed to magisterial custody on the date when he was produced before the Magistrate.

5) When police officer who is expected to discharge duty even by risking his life had allowed the main accused involved in the offence of murder to escape, there is no need of expert to say that he must have got consideration for that. In such cases the investigating officer ought to have made thorough investigation after getting police custody of Constable Nikam but that was not done. Such investigation by independent officer was necessary to find out whether any other officer was involved. There is peculiar circumstance that for that day regular staff was not available as per submission made before this Court. It shows that the police officer virtually helped Nikam and others in the matter. It is serious thing. The money which was collected by Nikam ought to have been recovered and the investigation ought to have been made with presumption that for illegal gratification this act was done by Constable Nikam. As this was not done by the investigating officer, it is more than dereliction in

duty. This Court is of the opinion that action needs to be taken against the investigating officer.

6) The Registrar (Judicial) of this Court is to send a copy of this order to the Superintendent of Police Aurangabad with a direction to supply information with regard to the action taken by him in the matter against the investigating officer within one month from today.

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

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