

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.18 OF 2017

Sanjay Pandurang Surve,
R/o.A-10, Rajdin Apartment, Mental
Hospital Road, Thane (West).

Applicant

versus

The State of Maharashtra

Respondent

Mr.Sudeep Pasbola i/by Mr.Rahul Arote for Applicant.

Mr.R.M.Pethe, APP, for State.

Mr.Rajendra Jadhav, Deputy Superintendent of Police, CID Office,
Konkan Bhavan, Navi Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th June 2017

PC :

1. The Applicant is apprehending arrest in connection with CR No.I-25/2012 registered with Central Police Station, Ulhas Nagar. The investigation is being carried out by State CID. The offences were registered under Sections 304-II, 331, 330, 323 read with Section 34 of Indian Penal Code ('IPC').

2. Brief facts as revealed from the first information report ('FIR') are as follows :

(a) The Central Police Station had registered an offence vide CR No.45 of 2011 under Sections 457, 458, 380 and 302 of IPC. The said offence was registered in respect of murder of Gowardhan Chelaram Dhalwani and Kavita Gowardhan Dhalwani in their house situated at Barrack No.895, opposite Room No.1, near Narayandas Hospital, Ulhas Nagar. They were assaulted by knife by some unknown persons who also committed house breaking at night and committed theft of gold ornaments and cash valued at Rs.95,000/-. The complaint was made by daughter of the deceased Smt.Deepa Narayan Rathod;

(b) The case was being investigated by the Applicant who was the senior police inspector attached to Ulhas Nagar Police Station and other police personnel attached to said police station. The deceased Gowardhan had four daughters and all of them were married. One of the daughter was residing with her husband at Pimpri-Chinchwad, Pune while other three daughters were residing at Ulhas Nagar along with their husbands. The complainant Deepa along with her husband Narayan Hanumant Rathod was residing near the house of the deceased;

(c) It is the case of the prosecution that during investigation, the police suspected involvement of Narayan Rathod and thereafter directed all the daughters of the deceased to remain present at Central Police Station, Ulhas Nagar along with their husbands on 25th February 2011 and 26th February 2011 for interrogation. It is alleged that Narayan Rathod was also called for interrogation and thereafter allowed to go;

(d) It is further alleged that Narayan along with his other three brothers were again called for interrogation on 28th February 2011. On that day, in the evening, Narayan Rathod allegedly confessed his involvement in the murder of Gowardhan and his wife, and therefore, his statement came to be recorded. However, the said statement was found to be inconsistent and conflicting, and he appeared to be confused. He was allowed to go at about 10.00 p.m., however, he was ordered to be kept under surveillance;

(e) The detection staff on the night duty PH Gaikwad and PN Mane, visited at his house at 1030 p.m. and they prepared report. It is alleged that PSI Ghuge and other staff of crime detection unit visited the house of Narayan Rathod on 1st March 2011 at about 1.30 hours and at that time they noticed Narayan Rathod sitting on the veranda of the house. The police called him and interrogated him and was asked to show the house of his workers. Accordingly Narayan led the police to the house of his workers namely Raju Rathod, Ramesh Chavan and Mulla at three different places. All the three persons were taken in custody for the purpose of interrogation. While proceeding back to the police station, PSI Ghuge and his staff dropped Narayan Rathod near his house at about 2.30 hours;

(f) It is alleged that according to Raju, deceased Narayan Rathod was seen at the police station till 5.30 a.m. in the morning and thereafter he was not seen. It is further alleged that on 1st March 2011, PS Bhosale, PN Sangle, PN Karale, PN Tepne and PN Salve on oral orders of Applicant brought Narayan Rathod to the

police station at 1335 hours and while interrogating him, he became ill;

(g) According to Raju, Narayan Rathod was seen being taken by police personnel hurriedly from police station between 1030 a.m. to 1100 a.m. by main gate. It is alleged that at that time Raju also saw that Narayan Rathod was being kicked by police personnel. Thereafter he also heard the shouts of Narayan Rathod while he was being interrogated. It is alleged that ASI Aaher informed that PC Chavan and PC Koli were also interrogated Narayan Rathod. He noticed that Narayan Rathod was lying in the room of detection room in bad condition. It is alleged that no entry regarding bringing Narayan Rathod back to the police station was made in the station diary;

(h) It is alleged that in order to compel Narayan Rathod to confess, police assaulted him and while taking him for treatment, he expired at 1415 hours at Central Hospital, Ulhas Nagar on the same day. PC Tarse who was posted at the Central Hospital, Ulhas Nagar, gave information to central police station and thereafter an inquiry under Section 174 of Cr.PC. in respect of custodial death commenced vide ADR No.20 of 2011;

(i) It is the case of the complainant that the inquest of the deceased was carried out by Tahsildar, Ulhas Nagar and while carrying out the inquest panchanama he noticed fresh injuries on his body. The body of Narayan Rathod was referred to J.J.Hospital for post mortem. The doctors at J.J.Hospital gave opinion in respect of

cause of the death as shock due to multiple injuries and unnatural. During the post mortem he was found to be having 25 injuries and three injuries could be possible by use of belt used in the flour mill, feast blow and by wooden sticks.

3. Learned counsel appearing for the Applicant submitted that on perusal of first information report ('FIR') it appears that he is not named as an accused in the FIR. It is further submitted that on 25th February 2011, while he was at his residence, station house officer informed him that in Barrack No.895, Opposite Room no.1, an aged couple had been murdered and the articles from the house were stolen. The Applicant, therefore, rushed to the spot and while he was inspecting the spot, other senior police officers also reached and thereupon the complaint of Deepa Narayan Rathod, the daughter of Gowardhan Dhalwani, was recorded and the offence was registered vide CR No.45 of 2011 against unknown persons. The Applicant instructed the police officers and staff of Ulhas Nagar to collect information for detection of the said crime. In this connection, for investigation of crime, the detection unit of Ulhas Nagar Police Station interrogated Narayan Rathod and three others. During the course of interrogation, behaviour of Narayan Rathod appeared to be suspicious. Therefore, it was decided to keep a watch on his movements. The daughters of Gowardhan Dhalwani along with their respective husbands were asked to join the investigation on 25th February 2011, 26th February 2011 and 28th February 2011. The Applicant had given written orders to P.C.Gaikwad and P.C.Mane to keep watch over the movements of Narayan Rathod and submit report to him. There were inconsistencies in confession and the

statement was incoherent. Therefore same was required to be verified. The Applicant was informed that condition of Narayan Rathod had deteriorated. The Applicant visited the detection unit and saw him resting against the wall and perspiring. The Applicant realized the seriousness and immediately directed S.C.Bhosale and his team to rush Narayan Rathod to Civil Hospital, at Ulhas Nagar for treatment. During treatment, Narayan Rathod expired at 14.50 hours. Information in that regard was conveyed to the police station by PC.Tarse on duty at Civil Hospital, at Ulhas Nagar. On receipt of the information, the Applicant informed his superiors and rushed to civil hospital. On making inquiries with the doctors, it was learnt that patient was brought, he was in a serious condition and they had made all efforts to save him, but were unsuccessful. It is submitted that investigation of ADR No.20 of 2011 u/s 174 of Cr.P.C. was undertaken by ACP Bagalkot. However, the further investigation of the case was transferred to State CID. On the basis of preliminary investigation carried out by State CID between 1st March 2011 and 3rd February 2012, it was revealed that the detection staff comprising of PC Bhosale, PN Sangale, PN Karale, PN Salve, PN Tepne, PN Chavan and PN Kole were responsible for causing death of deceased Narayan Rathod and accordingly an FIR was registered vide CR No.I-25 of 2012 with Central Police Station, Ulhas Nagar.

4. The Applicant further submitted that during the course of investigation he was called for investigation and his statement was recorded by State CID on 25th May 2015. Police also arrested seven staff members of detection unit and they were placed for remand before the Court of learned Metropolitan Magistrate, First Class, at

Ulhas Nagar and were subsequently ordered to be released on bail. It is submitted that from the period between 2011 to 2016, he has joined the investigation as and when called for. The Applicant has also produced relevant documents. On 23rd November 2016 he came to know that the case has been reviewed by the superiors in the meeting held at head quarters at Pune. On the same day, the police officer attached to State CID visited the house of the Applicant and made inquiries about his whereabouts and informed that the Applicant has to report to the office of State CID for investigation. The Applicant, therefore, apprehended that he will be arrested by police in connection with said FIR registered with Central Police Station, Ulhas Nagar. The Applicant, therefore, approached the Sessions Court for seeking anticipatory bail. The application was rejected by Sessions Court vide order dated 5th December 2016. Thereafter the Applicant had approached this Court seeking a pre-arrest bail. It is submitted that the Applicant was not named as an accused in the FIR which was registered after preliminary inquiry carried out by the officers of State CID between 1st March 2011 to 3rd February 2012. Thus, in the initial investigation there was no accusation against the Applicant being involved in the said offence. It is submitted that the Applicant is not responsible for assault or causing death of Narayan Rathod while he was in custody. It is submitted that since the death of Narayan Rathod was treated as custodial death, a magisterial inquiry was conducted by ACP Bagalkot, Ulhas Nagar Division and in the said inquiry also no suspicion was raised against the Applicant. It is further submitted that the allegation of assault of Narayan Rathod is alleged to have taken place in the morning of 1st March 2011 and after 10.30 a.m..

At that point of time, it is nobody's case that the Applicant was interrogating Narayan Rathod and/or that he had any knowledge regarding the alleged assault on Narayan Rathod.

5. It is submitted by learned advocate for the Applicant that because the Applicant is the Senior Police Inspector attached to the said police station, and that he had directed the detection of the crime to other staff of the said police station, it cannot be said that the Applicant is vicariously liable for the death of Narayan Hanumant Rathod. It is nobody's case that the deceased was assaulted on the instructions of Applicant or that the Applicant had aided and abetted the physical violence or subjected the deceased to any third degree treatment. On the contrary, when the Applicant came to know that the condition of Narayan Rathod was serious, he immediately rushed him to the hospital and upon learning about his death immediately informed his superiors and further co-operated in the magisterial inquiry as well as preliminary inquiry carried out by State CID. It is further submitted that the question of assault on Narayan Rathod does not arise inasmuch as Narayan Rathod had confessed of his involvement in the crime and merely because some inconsistencies were being verified, he was kept surveillance. There was no allegation that Narayan Rathod was assaulted while he was called for interrogation on 28th February 2011 along with his wife, brother-in-laws and sister-in-laws. The police during the course of preliminary investigation has recorded the statement of various witnesses. However, there was no cogent evidence to point out the involvement of Applicant in the said crime.

6. The State has filed affidavit opposing the anticipatory bail application preferred by the Applicant. Learned APP Mr.Pethe appearing for the State strongly opposed this application. He submitted that there is sufficient evidence to show the involvement of the Applicant in the custodial death of Narayan Rathod and, therefore, he is not entitled for the relief under Section 438 of Code of Criminal Procedure, 1973 ('Cr.PC.'). It is submitted that during investigation of the crime, the Applicant and his team suspected involvement of Narayan Rathod and thereafter instructed all the daughters of Gowardhan Dhalwani, father-in-law of the deceased, to remain present at Central Police Station along with their husbands on 25th February 2011 and 26th February 2011. In the statement of complainant Smt.Deepa Rathod recorded under Section 164 of Cr.P.C. before the Magistrate it is stated that while conducting the investigation of CR No.45 of 2011, on 28th February 2011, at about 5.00 a.m., three policemen came to her house in civil dress and took along with them her husband Narayan Rathod and brother-in-law of Mr.Ashok. It is further recorded in the statement that on 1st March 2011, at about 1.00 a.m. to 1.30 a.m., the police came to her house along with her husband for interrogation. At that time, police informed her that her husband had murdered her parents and the police further inquired about whereabouts of the stolen money and ornaments. Upon this query, she in turn, put the same questions to her husband. However, as per the statement, the police personnel took away Narayan Rathod forcibly. It is further stated that on the same night at about 3.00 a.m. police personnel brought her husband to her house. Smt.Deepa Rathod was sitting in hall. Police asked her to go to other room and room was locked and Police interrogated her

husband in the hall. She further stated that one of the police officer was having scar on his face stated to be Mr.Ghuge is the same officer who had earlier came at her residence at 1.00 a.m.. It is further stated in the statement that at around 10.00 a.m. in the morning, she received a call on her sister's mobile phone. The person calling though claimed to be Narayan Rathod and stated that he is responsible for the murder and theft, she further stated that at about 12.30 to 1.00 p.m., a reporter of Channel-9 informed her that one of the accused who has been arrested by police, has succumbed to death. Thereafter she rushed to the police station. However, police officer forced her out cautioning her that they will throw the dead body of Narayan Rathod claiming that he was trying to break the jail. It is further stated that the investigation was transferred to Crime Branch and in the investigation involvement of three other accused came to light and they were arrested and the stolen articles and cash was recovered from them. It is submitted that the involvement of Narayan Rathod was not substantiated in the Crime No.41 of 2011. The post mortem of deceased Narayan Rathod shows that he had sustained several injuries on his body and he had died due to multiple injuries.

7. Learned APP pointed out the office order dated 25th February 2011 which has been annexed at page 57 of the affidavit-in-reply filed by the State. In the said order it is stated that on 25th February 2011 unknown persons have committed the murder of Gowardhan Dhalwani and Kavita Dhalwani and that they have committed theft in their residential premises and the offence has been registered vide CR No.45 of 2011. The Applicant being the senior inspector of police

attached to the said police station, had directed the staff to conduct investigation, to collect the information about the crime and to carry out the investigation. The order also reflects the names of staff persons as the persons to whom the direction was given. It includes the inspectors, constables as well as PSI Mr. Ghuge as the persons to whom the said directions were given. Learned APP on the basis of said direction submitted that it is clear from the said order that the Applicant was part of investigating team. He further pointed out the order dated 28th February 2011 issued by the Applicant which has been annexed to the affidavit at page 59. It is noted therein that the directions were issued to the constables named therein namely PB Gaikwad and VT Mane that Narayan Hanumant Rathod was being brought to the police station. After inquiry with him, the statement has been recorded. The preliminary inquiry shows that his involvement is being reflected in the said crime and that he was found to be in a confused state of mind. It was further mentioned that he was allowed to go at 20.00 hours. The constables were directed to keep surveillance upon said persons considering that prima facie he appears to be involved in the crime. Learned APP, therefore, submitted that the said direction also shows that the Applicant was conducting the investigation of CR No.45 of 2012. Learned APP pointed out the statements of witnesses recorded under Section 164 of Cr.P.C. which were also annexed to the affidavit-in-reply. It is submitted that the statements of other witnesses which were also annexed to the affidavit show the involvement of Applicant in crime. The statement of Chandar Jadhav, Meena Lasi, Avinash Jagtap, Ashok Lasi, Raju Rathod, Sikandar Rathod and Kakasaheb Petkar, Heero Kukreja were annexed to the affidavit. The said

statements were recorded on 14th November 2014. The statements record the acts committed by police personnel attached to Ulhas Nagar police station. The statement of Kakasaheb Hotkar, ASI, attached to Central Police Station refers to the fact that at 1335 hours the suspect was brought to the police station by HC Bhosale, PN Sangle, PN Karale, PN Tepne and PN Salve. He was taken to detection branch and was brought out again. It is stated by him that said police personnel informed him that the said person is not keeping well and he is being taken to hospital. He also made a reference to the fact that the Applicant directed him to make entries with regard to the incident in the station diary. He stated that the investigation of CR No.45 of 2011 was with Applicant. However, he stated that whether the suspect was being assaulted in the detection branch by the police, is not to his knowledge, as he did not visit the detection branch. Learned APP has also placed reliance upon station diary entries and extracts of station diary have been annexed to the affidavit. It is submitted that entries were made to suit the Applicant. Learned APP submitted on the basis of aforesaid material it is apparent that the Applicant is involved in the said crime and, therefore, does not deserve to be released on anticipatory bail. He submitted that in the aforesaid circumstances, custodial interrogation of the Applicant is necessary.

8. Learned APP further submitted that the statement of various witnesses recorded under Section 164 of Cr.P.C. speak of involvement of Applicant. The case was investigated by Applicant with the help of detection staff of police station. The Applicant had acceded and abused his authority while investigating the crime. It is further

submitted that entries in the police diary were moulded in such a manner to suit the Applicant. It is submitted that despite the deceased was taken to police station for interrogation on 28th February 2011, no entry to that effect was made in the police diary. The deceased was interrogated in illegal custody. The act of Applicant amounts to terrorism. It is further submitted that the station diary indicates that the deceased Narayan Rathod was shown to be brought to police station at 1.35 p.m. on 1st March 2011 and was sent for medical examination at 1.45 p.m. within ten minutes after previous entry. It is submitted that if pre-arrest bail is granted to the Applicant, he along with other co-accused will indulge in tampering of evidence by influencing the witnesses and as such it is necessary to have the custodial interrogation of the Applicant in order to meet the ends of justice and to prevent the abuse of process of law.

9. I have perused the documents on record as well as affidavit filed by the State and documents annexed to the said affidavit. It is noted that the incident of custodial death had occurred on 1st March 2011. The ADR No.20 of 2011 was registered vide Section 174 of Cr.P.C. and the inquiry was being conducted by ACP Bagalkot. Subsequently the investigation was transferred to State CID. An FIR was registered with Central Police Station, Ulhas Nagar on 3rd February 2012. On the basis of preliminary investigation carried out by State CID, between 1st March 2011 to 2nd March 2012, it was revealed that police personnel attached to said police station were involved. Therefore, they were named in the FIR as the persons who were responsible for commission of custodial death of deceased

Narayan Rathod. The names of detection staff comprising of PC Bhosale, PN Sangle, PN Karale, PN Salve, PN Tepne, PN Chavan and PN Koli were reflected in the FIR as the persons who were responsible for the said crime. The name of Applicant was not impleaded in FIR as an accused. It is apparent that the Applicant was available for interrogation or investigation of the said crime from 2011 till 2016. At the earlier point of time, investigating machinery had not come to the conclusion that the Applicant was involved in the said crime. After a period of about five years, the Applicant is sought to be arrested for the purpose of interrogation in custody. On perusal of the statement relied upon by the prosecution, it is apparent that it is nobody's case that the Applicant was interrogating Narayan Rathod and/or that he is the person who had assaulted the deceased Narayan in the detection room. There is no strong and cogent evidence to show that the Applicant had any knowledge about the fact that the deceased Narayan Rathod is being assaulted by other police personnel attached to the said police station. It is to be noted that the Applicant was the senior inspector attached to said police station. However, merely on account of the fact that he had given directions for investigation of CR No.45 of 2011 in which Narayan was strongly suspected to be an accused, and further that the Applicant had directed the detection staff to interrogate him, the Applicant cannot be held vicariously liable for the death of Narayan Rathod. On perusal of the statement on record, it is nobody's case that Narayan Rathod was assaulted on the instructions of Applicant or that the Applicant had aided and abetted the physical violence or subjected the deceased to any third degree treatment. The prosecution is inferring that the Applicant being the

investigating officer or being the senior inspector attached to the police station, had participated in commission of the said crime. The infirmities in station diary do not show involvement of the Applicant in assaulting the victim.

10. It is further noted that the order dated 25th February 2011 issued by the Applicant which is relied upon by the prosecution states that the directions were issued to police personnel mentioned therein to conduct the inquiry in relation to CR No.I-45/2011. They were instructed to collect information through their informants and also to unearth the said crime. It was stated that two persons were murdered by using a sharp weapon and theft has been committed in their premise. The names of police officers who were directed to follow the said directions are also reflected in the said order. It includes names of several Assistant Police Inspectors and Police Inspectors including PSI Mr.Ghuge. Taking the said order as it is, it does not show the complicity of Applicant in assaulting the deceased Narayan Rathod. On the basis of such directions, no inference can be drawn that the Applicant had directed the police personnel to bring the deceased at the police station and assault him or use third degree methods against him while interrogating him. There is no doubt that the alleged crime is very serious and an innocent person has been allegedly subjected to death in custody. However, it has to be noted that the persons who had purportedly committed the crime, were named in the FIR and during the course of investigation their involvement was noticed and they were arrested and have been subsequently released on bail. The Applicant was available for the purpose of inquiry right from 2011 till today and in spite of that at

the earlier point of time no involvement of the Applicant was being shown and he was not sought to be arrested for the purpose of any custodial interrogation. The investigation is conducted for a long period of time and whatever documents which were required in the investigation, are already in custody of the investigating machinery. The persons who had allegedly assaulted the deceased, were arrested and interrogated. I have perused the statements of witnesses which are annexed to the affidavit-in-reply filed by the State. The said statements were recorded in the year 2014. The said statements do not state anywhere that the Applicant had at any point of time visited the residence of deceased Narayan Rathod or was seen at any point of time interrogating the deceased. The statements also do not attribute any overt act of assault to the Applicant. The inference is being drawn that since the Applicant is the in-charge of police station and was investigating the crime, he is responsible for the death of Narayan Rathod. This conclusion is found in all statements and it is stated that apart from others, the Applicant is also responsible for the said crime. However, the investigating machinery has not been able to point out any evidence to show that the Applicant was involved in assaulting or aiding and abetting the assault upon the deceased Narayan Rathod. It is pertinent to note that in the statement of Smt. Deepa Rathod it is stated that Mr. Ghuge who is attached to the said police station, had attended the residence of deceased. However, she has stated that the said person was having a scar mark on his back. It appears that the investigating authority did not find his complicity on account of the fact that Mr. Ghuge does not have any such scar mark.

11. On perusal of the statements referred to by learned APP, which are annexed to the affidavit-in-reply, it is evident that the Applicant has not been attributed the role of using third degree methods against the deceased Narayan Rathod. It is also not revealed that at the time of alleged assault the Applicant was amongst the persons who was interrogating the deceased Narayan Rathod while in custody of police. The witnesses had stated while summarizing that the Applicant is also responsible for the said crime. It is also submitted at the instance of prosecution that there were infirmities in making the station diary entries. It is also stated in the affidavit that if pre-arrest protection is granted to the Applicant, he will indulge in tampering of evidence along with co-accused and, therefore, it is necessary to have custodial interrogation of the Applicant to meet the ends of justice. It is further stated that unless the Applicant is placed under custodial interrogation, the investigation cannot be taken to its logical end. It is submitted that the Applicant had knowledge and had shared a common intention with co-accused. The Applicant being served in the police force, is likely to have access to records, the witnesses and, therefore, application be rejected.

12. As observed hereinabove, there is no cogent material to link the Applicant with the assault. The question of tampering with the evidence or influencing the witnesses does not arise. The Applicant was available since 2011. For the first time he was sought in this case in 2016. The co-accused are already released on bail. The Applicant was posted to another police station subsequently. The custody of the Applicant is being sought on the basis of inferences. It

is apparent that at the earlier point of time, the investigating machinery did not find it necessary to arrest the Applicant. Taking into consideration the above circumstances, pre-arrest bail can be granted to the Applicant.

13. Hence, I pass following order :

(i) In the event of arrest of the Applicant in connection with CR No.I-25 of 2012 registered with Central Police Station, Ulhas Nagar, the Applicant may be released on bail on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(ii) The Applicant is directed to report the Deputy Superintendent of Police, State CID, Konkan Bhavan, Navi Mumbai, on every Friday between 11.00 a.m. and 1.00 .m. till further orders;

(iii) It is clarified that the observations made in this order are only for the purpose of considering this application;

(iv) The application is disposed of.

(PRAKASH D. NAIK, J.)

MST