

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.619 OF 2017

1. Surendra Sudhakar Nagwekar, Age 46 years,  
Occ.Service, Mumbai Police,  
R/o.Budha Pancham Chawl N.2,  
Room No.4, Ram Nagar, Bodhankar Wadi,  
Jogeshwari, Mumbai.

2. Anil Ganpat Surve, Age 52 years,  
Occ.Service, Mumbai Police, R/o.10/C/511,  
5<sup>th</sup> Floor, MHADA Police Vasahat,  
Andheri (W), Mumbai.

3. Ganesh Gulabrao Salunkhe, Age 50 years,  
Occ.Service, Mumbai Police, R/o.D-2, 406,  
Sharma Safalya, Samata Nagar,  
Kandivali (East), Mumbai.

Applicants

versus

The State of Maharashtra through  
DCB, CID, Mumbai.

Respondent

Mr.Nitin Sejpai for applicants.

Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 16<sup>th</sup> July 2018

PC :

1. The revision applicants have taken exception to the order dated 10<sup>th</sup> November 2017 passed below Exhibit-8 in Sessions Case No.465 of 2014 by Additional Sessions Judge for Greater Bombay.

2. The applicants had preferred the application seeking discharge in the said proceedings arising out of CR No.44 of 2014 registered

with DCB, CID, Mumbai. The offences were registered under Sections 304 and 201 of Indian Penal Code.

3. Brief facts of the prosecution, as revealed from the charge sheet, are as follows :

(a) On 22<sup>nd</sup> April 2014 the complainant resumed his duties at about 10.30 a.m. The complainant was informed by Senior Police Inspector Avinash Sawant that one of the accused namely Aakash Kharade, who was arrested in connection with CR No.139 of 2014 and who was in custody of Samata Nagar Police Station pursuant to his arrest in the said crime, was found lying unconscious near bath room and that he has been removed to Shatabdi Hospital for treatment. The complainant rushed to the hospital and upon reaching the hospital, it was transpired that the victim was dead before admission;

(b) Since it was a case of custodial death, permission was obtained from the District Collector in accordance with Section 176 of Code of Criminal Procedure, 1973 to carry out inquest panchanama. Subsequently inquest panchanama was drawn and thereafter the dead body of the deceased Aakash Kharade was sent for post mortem under ADR. The doctors who performed the post mortem on the dead both of the deceased, had forwarded their opinion;

(c) Deceased Aakash Kharade was arrested for committing the alleged offence u/s 302 read with Section 34 of Indian Penal Code. It is alleged that the said accused was assaulted by the

applicants-accused and two others with kicks and belt during interrogation for recovering incriminating articles. It is also alleged that the deceased Aakash Kharade was forced to drink urine and consume stool. The deceased Aakash Kharade succumbed to the injuries sustained by him;

(d) On the basis of complaint of Chimaji Jagannath Aadhav, the first information report was registered vide CR No.200 of 2014 with Borivali Police Station against applicants-accused and others;

(e) During the course of investigation the applicants and two other constables were arrested. The panchanama of scene of offence was recorded and post mortem report was collected. On completing the investigation, the charge sheet was filed against the applicants-accused.

4. Learned counsel for applicants made following submissions :

(i) There is no evidence to proceed against the applicants. On careful perusal of the entire charge sheet, no offence is made out against the applicants;

(ii) Even if prosecution evidence is read as it is, there is absolutely no material to proceed against the applicants. There is no possibility that the applicants would be convicted in this case;

(iii) Learned Sessions Judge has committed an error while rejecting the application for discharge. The applicants are falsely implicated in the offence. No offence is made out under Sections 304 and 201 of Indian Penal Code;

(iv) Nothing incriminating has been recovered from the applicants. They were not posted at Borivali Police Station lock-up, whereas, they were attached to Samata Nagar Police Station;

(v) It is not the prosecution case that applicants went to Borivali Police Station lock-up and sought custody of the deceased Aakash Kharade and the lock-up clerk had handed over his custody to the applicants. There is no material to show that the custody of the deceased was taken by applicants prior to his death;

(vi) The station diary entries of the lock-up register support the case of applicants that they were not present at the spot of incident at the time of alleged incident. There is distance between Samata Nagar Police Station and Borivali lock-up;

(vii) The applicants had not lodged the deceased at Borivali lock-up. No injuries were noticed at the time of arrest of the deceased. It is the duty of the lock-up clerk to verify health condition of the person put up in lock-up and whether he sustained any injury. The applicants were not in-charge of Borivali lock-up. It is not the case of the prosecution that applicants had visited Borivali lock-up and interrogated the deceased Aakash Kharade after he was kept in lock-up. The prosecution had not made out any case for proceeding against the applicants;

(viii) Learned Sessions Judge erred in rejecting the application for discharge and arriving at the conclusion that there is prima facie material against applicants. However, on careful perusal of the

entire charge sheet, it can be seen that there is no case made out to prosecute the applicants-accused for the said offences.

5. Learned APP submitted that there is strong evidence against the applicants to proceed against them. The statements of witnesses on record attributes overt act to the applicants. While dealing with the application for discharge, the Court is required to see whether prima facie case is made out against the accused to proceed against them. At this stage the Court cannot evaluate the evidence. The material on record is sufficient to frame the charge against the applicants-accused. The prosecution is relying on the statements of witnesses who have attributed overt act to the applicants. The submissions advanced by the applicants cannot be considered at this stage. The submissions are in the nature of defence, which should be appreciated at the time of trial. The accused are involved in a serious crime. The case relates to custodial death. The deceased has suffered about thirty injuries on his person. It is, thus, submitted that the application is devoid of merits and the same be dismissed.

6. The first information report was registered on 2<sup>nd</sup> June 2014. The deceased Aakash Kharade was arrested on 18<sup>th</sup> April 2014 in connection with CR No.139 of 2014. The alleged incident had occurred on 21<sup>st</sup> April 2014. The deceased was found lying in unconscious condition near the bath room. He had sustained injuries all over his body. During the course of investigation statements of other inmates from lock-up who are also the co-accused in the case in which deceased was arrested, had stated that the applicants had assaulted Aakash Kharade mercilessly. The deceased and other accused in the said case were subjected to third degree methods.

The investigating officer has also recorded the statements of relatives of the deceased and the friend of the deceased was also interrogated and subjected to ill-treatment. The cumulative effect of statements of all these witnesses show involvement of the applicants in the said crime. Admittedly the deceased was arrested by Samata Nagar Police Station and was in police custody at the time of alleged incident. The co-accused in the said case were also arrested and they were in the custody. The applicants were attached to Samata Nagar Police Station. The investigating officer had also arranged test identification parade wherein the accused were identified. The statement of Smt.Sunayana Nate who is attached to Samata Nagar Police Station as woman police inspector was recorded on 25<sup>th</sup> June 2014. In her statement she has given details about the arrest of deceased Aakash Kharade and others. She has also stated that she was investigating the said crime. On 19<sup>th</sup> April 2014 the accused Aakash Kharade, Aakash Sharma and Aakash Dhumal were arrested. They were produced before the Court for remand and remanded to police custody till 23<sup>rd</sup> April 2014. Thus, at the time of incident, the deceased was in police custody. The witness was also busy in election programme and hence gave instructions to the concerned persons to proceed with the investigation of crime. She stated that instructions were given to the investigating team not to assault the arrested persons. However, she has stated that the arrested accused did not complain to her about ill-treatment meted out to them by police. The statement of Police Head Constable Narayan Shinde, who was posted at Borivali general lock-up on the night of 21<sup>st</sup> April 2014 states that at about 4.10 a.m. of 22<sup>nd</sup> April 2014, police attached to Samata Nagar Police Station came with the victim and asked to keep him in lock-up. On the same day the victim was found

lying near the bath room in unconscious condition. After he was taken to hospital, he was declared dead. It is crystal clear that the victim was in custody of Samata Nagar Police Station for the purpose of investigation and he was kept in police lock-up at about 4.10 a.m. on 22<sup>nd</sup> April 2014 and thereafter he was found unconscious and subsequently declared dead. The statements of Police Head Constable Ankush Gawde and Police Naik Mohan Kamble also support the prosecution case.

7. The statements of other witnesses disclose that on 19<sup>th</sup> April 2014, the victim was brought to his house for taking search. He was assaulted by police in his house and thereafter he was taken to another place. The statements of Aakash Sharma and Aakash Dhumal, who were apprehended by police, categorically state that they all were assaulted by applicants-accused by belt and stick. Their statements also indicate that the victim was assaulted and he had sustained injuries on head and left eye brow. The statement of Rashutosh Pandey also corroborates the versions of other witnesses. The statement of Vinayak Shriram Chavan recorded on 9<sup>th</sup> June 2014 and 14<sup>th</sup> August 2014 also supports the prosecution case showing involvement of the accused in the crime. During the identification parade, the witnesses Aakash Sharma, Aakash Dhumal, Rashutosh Pandey and Vinayak Chavan identified accused nos.2, 3 and 5 as one of the assailants. The statement of Dr.Savarkar who examined the victim, stated that he had noticed injuries on the person of the deceased. Dr.Dubey also refers to the injuries on the victim. Thus, there are eye witnesses to the incident. There is sufficient evidence to proceed against the applicants-accused and no case for discharge is made out.

8. In the circumstances, Criminal Revision Application No.619 of 2017 is devoid of merits and the same is required to be dismissed. It accordingly stands dismissed. It is made clear that the observations made in this order are for deciding the revision application for discharge and the Trial Court shall not be influenced by the same during trial.

(PRAKASH D. NAIK, J.)

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