

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ABA/503/2020**

Yogesh Patil & Anr.

... Applicants

V/s.

The State of Maharashtra

... Respondent

Mr.N.N. Gavankar a/w. Mr.Manas Gavankar and Mr.Shreyas Gavankar i/b.
Mr.Samay Pawar for Applicants.

Mr.S.V. Gavand, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.**DATE : 22nd July 2020.****PC. :**

This is an application for pre-arrest bail in C.R. No. 0026 of 2020, dated 06.02.2020, under Section 302 read with 34 of the Indian Penal Code registered with Sawantwadi Police Station, District Sindhudurg.

2. Heard Mr.N.N. Gavankar, learned counsel for the applicants and Mr.S.V. Gavand, learned A.P.P. for the respondent-State through Video Conferencing.

3. The First Information Report is lodged on behalf of the State by Shri. Sunil Kisan Dhanavade, Police Inspector attached to Sawantwadi Police Station on 06.02.2020.

The applicant No.1 was the Superintendent of District Prison Class-II, Sawantwadi and the applicant No.2 was the Subedar of the said Prison, on the date of lodgement of the present crime.

It is the prosecution case that, on 20.12.2019 the applicant No.2 Zilba Pandharmise lodged an accidental death report of prisoner Rajesh Shridhar Gaonkar. The said report was registered as A.D.R. No.74 of 2019 under Section 174 of the Criminal Procedure Code by the concerned Police. The informant thereafter undertook investigation of the said accidental death report.

In his A.D.R. No.74 of 2019, the applicant No.2 has stated that, Shridhar Gaonkar (deceased) was an accused in Sum. Case No. 125 of 2019, under Section 65 (e) of the Maharashtra Prohibition Act, which was pending on the file of Devgad Court. The said Shridhar Gaonkar was lodged in Sawantwadi District Prison Class-II since 17.12.2019. That, on 20.12.2019 when the applicant No.2 was on his circle duty, at about 10.40 am a prisoner from barrack No.1, namely, Mahantesh Kadolkar informed him that prisoner Rajesh Gaonkar appears to be serious. The applicant No.2 therefore went to the barrack of Rajesh Gaonkar and found him slipping on his bed. The applicant No.2 gave him a call, whereupon Rajesh Gaonkar tried to speak something but was unable to speak. The applicant No.2 therefore gave information of the same to the applicant No.1 on wacky-talky and thereafter,

the said Rajesh Gaonkar was shifted to Sub-District Hospital at Sawantwadi. The doctors therein, after examination declared him brought dead.

The informant thereafter conducted inquest panchanama and other necessary legal formalities. The informant also recorded statements of co-prisoners after taking necessary permission from the Judicial Magistrate First Class, Sawantwadi. After receipt of Postmortem Notes, the informant concluded that the death of Rajesh Gaonkar was infact a murder committed by the applicants. That, when the said Rajesh Gaonkar was in the lawful custody of the applicants being Jail Officers, they assaulted him and committed his murder. In the brief premise, the present crime is registered.

4. Mr.Gavankar, learned counsel for the applicants submitted that, there is no corresponding injury mentioned in the Inquest Panchanama to the head though alleged in Postmortem notes. He further submitted that, the co-prisoner, namely, Sachin Suryakant Gurav on 20.12.2019 had addressed a letter to the Superintendent of Jail, Sawantwadi District Prison Class-II informing him that, the said co-prisoner will undertake hunger strike till death, if justice is not given to deceased Rajesh Gaonkar. That, in his letter dated 20.12.2019, the said co-prisoner Sachin Gurav has not stated about the assault by the applicants on deceased Rajesh Gaonkar. That, the said Sachin Gurav by his letter dated 30.12.2019 has further informed the jail authority that though he had undertaken hunger strike until death on 20.10.2019, he

has abandoned the same on 22.12.2019 at 10:00 pm. Mr.Gavankar further submitted that, a perusal of Inquest Panchanama would indicate that, there are no major injuries mentioned therein and therefore, the observation of the Trial Court that the deceased suffered injuries is contrary to the record. He submitted that, for maintaining discipline in the prison, the Special Director General of Police (Prison), South Region, Byculla, Mumbai-8 by his letter dated 26/27.12.2019 has transferred in all 5 prisoners from Sawantwadi District Prison Class-II to Sindhudurg District Prison. He further submitted that, the 'Medical Certificate' issued by the Medical Officer of the Sub-District Hospital, Sawantwadi, dated 19.12.2019, simply mentions that, Rajesh Gaonkar was suffering from 'acute alcohol withdrawal syndrome' and nothing more. He submitted that, on 19.12.2019, the Superintendent, Sawantwadi District Prison Class-II, Sindhudurg had issued a letter to the Superintendent of Police Sindhudurg-Oras that, for taking deceased Rajesh Gaonkar to the hospital, sufficient police party may be provided urgently, as there was possibility that he may abscond from hospital or people having enmity with him may assault him. He submitted that, the three witnesses who have given statements subsequently had given earlier statements thereby exonerating the applicants from any offence. He submitted that, in their supplementary statements the said three witnesses have implicated applicants for the reasons best known to them. He submitted that, the applicants are Government

Servants and if they are arrested, their service may be in jeopardy and therefore, the applicants may be protected by pre-arrest bail. He, therefore, prayed that the present application may be allowed.

5. Per contra, Mr.Gavand, learned A.P.P. vehemently opposed the application and submitted that, as per the Postmortem notes in all 17 injuries are found, out of which 6 injuries are to his head and therefore, the contention of the learned counsel for the applicants is not correct in that behalf. He further submitted that, Assistant Professor attached to Department of Forensic Medicine and Toxicology, Raje Chhatrapati Shahu Maharaj Government Medical College, Kolhapur, has given an opinion dated 24.01.2020 stating that, the injuries suffered by the deceased on his head and the internal corresponding injuries thereon are possible by assault of hard and blunt object. He submitted that, as the other staff of the jail and prisoners therein were under the control of the applicants, they did not give free and fair statements to the police, till the date. He submitted that, until and unless the applicants are arrested, the entire truth behind the death of Rajesh Gaonkar will not be unearthed. He, therefore, prayed that the present application may be dismissed.

6. Perusal of record and other documents would clearly indicate that, initially the inmates of the jail, did not give correct version of the incident to the Investigating Officer as they were under the authority of the

applicants herein. The applicants had threatened the inmates of the jail that, if they tell the truth to the Investigating Agency, their tenure in the jail will be extended and harassment would be caused to them. The Investigating Officer after taking permission from the learned Judicial Magistrate First Class, Sawantwadi has recorded statements of three witnesses. The said witnesses in their statements have stated that, after the death of Rajesh Gaonkar, the applicant No.1 herein had threatened them for not giving any statements to the police and therefore, they had given favourable statements to the applicants. The said witnesses now have stated that on 19.12.2019, near the Lal Gate of the Prison, the applicant No.1 had assaulted Rajesh Gaonkar with fists on his stomach and back and the applicant No.2 had assaulted Rajesh Gaonkar with stick on his hands and back mercilessly. Due to the same, Rajesh Gaonkar had fallen in the barrack. The said witnesses have specifically stated that, though Rajesh Gaonkar was ill and the said fact was known to the applicants, they mercilessly assaulted him. After the said assault, the applicants did not take him to the doctor for necessary medical treatment immediately and therefore, Rajesh Gaonkar died.

The Postmortem notes of Rajesh Gaonkar indicate that, he suffered in all 17 injuries including 6 injuries to his head. That, the external injuries mentioned on page No.3 of the Postmortem Report are corresponding to internal injuries of the head and scalp. The Head of Forensic Science

Department, Raje Chhatrapati Shahu Maharaj Government Medical College, Kolhapur in his opinion dated 24.01.2020 has categorically opined that, the internal injuries to the head have not caused due to fall and the said injuries are possible by assault with hard and blunt instrument.

7. It is to be noted here that, deceased Rajesh Gaonkar was lodged in Sawantwadi District Prison Class-II, under the Orders of the learned Magistrate at Devgad and he was in Judicial Custody. It was incumbent on the part of the applicants being Jail Officials to take necessary care of the prisoner. The record clearly indicates that, contrary thereof, as per the version of the eye-witnesses though the applicants were aware of the fact that, Rajesh Gaonkar was ill, they assaulted him mercilessly for some trifle reason and did not take Rajesh Gaonkar for medical assistance immediately. Rajesh Gaonkar was declared brought dead by the doctors of the Sub-District Hospital Sawantwadi on 20.12.2019 at about 11.35 am.

It further appears from the record that, the other jail staff has given favourable statements to the applicants, as they were under the authority and command of the applicants. The weapon/stick used by the applicants in commission of the present crime is yet to be recovered. Unless and until applicants are thoroughly interrogated by the Investigating Agency, the entire truth behind the murder of Rajesh Gaonkar will not be unearthed.

8. After taking into consideration the serious allegations against the applicants, gravity of the offence and their need of custodial interrogation, this Court is of the view that the applicants are not entitled to be protected by pre-arrest bail.

Application is accordingly rejected.

[A.S. GADKARI, J.]