

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 813 OF 2019

Zakir Nabilal Pattiwale

..Applicant

Vs.

State of Maharashtra

..Respondent

Mr. Umesh Mankapre, Advocate for the Applicant.

Mr. H. J. Dedhia, APP for the State.

CORAM : C.V. BHADANG, J.

DATE : 9TH DECEMBER, 2020

PC.

1. The applicant (accused no. 6) alongwith others, is facing prosecution for the offence punishable under Section 302, 201, 330 and 331 of the Indian Penal Code in CR No. 243 of 2017, Police Station Sangli City, for having intentionally caused death of Aniket Kothale.

2. This is a case of custody death. Aniket Kothale (since deceased) and Amol Bhandare were arrested and were in the police custody in CR No. 238 of 2017 of Police Station Sangli City under

Section 392, 365 read with Section 34 of the IPC. The prosecution case is that, in the night intervening between 6th and 7th November 2017 at about 23.45 hours the co-accused ASI Kamte and others assaulted Aniket as well as Amol Bhandare after they were stripped their clothes, in which Aniket received injuries, resulting into his death. Subsequently, the dead body of Aniket was carried to a secluded spot at Amboli and burnt, in order to destroy the evidence.

3. In this case after investigation is over a chargesheet is filed and the trial is said to be pending before the learned Sessions Judge at Sangli.

4. I have heard the learned counsel for the applicant and the learned APP. Perused record.

5. Mr. Mankapure, the learned counsel for the applicant submitted that the applicant is not a police officer and the deceased was not in the custody of the applicant. It is submitted that all the other co-accused are police officers. The learned counsel referring to the FIR dated 8th November 2017 lodged by PI Rajan Mane of LCB, submitted that the only role attributed to the applicant, is that he helped in getting the dead body of Aniket Kothale clothed. He,

therefore, submits that the applicant had no complicity in the matter of assault and the eventual death of Aniket Kothale. He submitted that the investigation is complete and chargesheet is filed. Learned counsel further submitted that there are about 50 prosecution witnesses which are cited and therefore, the trial is not likely to conclude in near future. He, therefore, submitted that the further incarceration of the applicant pending trial is not necessary.

6. Learned APP has submitted that the offence is serious in which police officers are alleged to have caused death of accused in custody by brutally assaulting him in the city police station at Sangli. The learned APP has referred to the complaint of PI Rajan Mane in order to point out that the applicant was shown to be present and helped in getting the dead body of Aniket clothed after he died on account of the assault. He then referred to the statement of Amol Bhandare recorded on 15th November 2017 in order to point out that the applicant had helped in tying the legs of Aniket before he was assaulted and was hanged from the ceiling. He submitted that the applicant had shared the common intention and therefore, this is not a fit case for grant of bail.

7. I have given my anxious consideration to the circumstances and the submissions made. At this stage it is neither necessary nor appropriate to appreciate the material in detail, so as to record any final opinion. The trial is said to be pending in which the learned APP informs that the prosecution has examined six witnesses upto February 2020, after which the physical court hearings were suspended.

8. Prima facie from the FIR lodged by PI Rajan Mane, and particularly the statement of Amol Bhandare, who is an eye witness, it appears that the applicant was present at the time of the incident. The statement of Amol Bhandare, prima facie indicates that the applicant had also helped in tying legs of deceased Aniket. It is in this context that the contention on behalf of the State, that the applicant was sharing common intention, has to be considered.

9. Looking to the nature of offence and the complaint lodged by PI Rajan Mane and the statement of Amol Bhandare, I do not found that this is a fit case for grant of bail. Now that the physical court hearings have resumed and trial is said to be part heard, the same can be expedited.

7. Needless to mention that this being a custody trial, the learned Sessions Judge shall proceed to hear and decide the same, as expeditiously as possible.

C.V. BHADANG, J.