

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

CRIMINAL WRIT PETITION NO.838 OF 2021

Suratsingh Bhavanisingh Rathod ... Petitioner

Versus

The State of Maharashtra ... Respondent

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Mr. Karansing Rajput, Advocate for the Petitioner.

Mr. Y. M. Nakhwa, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 2nd MARCH, 2021

PER COURT:

1. The petitioner has challenged the orders dated 2nd February, 2021 and 8th February, 2021 passed by the learned J.M.F.C. Thane.

2. The First Information Report was registered for offence under Section 304 of Indian Penal Code (for short “IPC”) with Kashimeera Police Station, Thane, vide C.R. No. 902 of 2020 on 25th November, 2020.

3. The investigation proceeded. The petitioner was arrested on 17th December, 2020.

4. On completing investigation report was submitted

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before the Trial Court, for offence under Section 304-A of IPC. The learned Magistrate by order dated 2nd February, 2021 observed that the accused was arrested for offence under Section 304 of IPC and he is in judicial custody. The Investigating Officer has tried to convince the Court that offence under Section 304-A of IPC is applicable. However, on perusal of documents, the offence under Section 304 of IPC is made out. The Investigating Officer has failed to satisfy the Court as to how the offence under Section 304 of IPC is not made out and Section 304-A of IPC is applicable. The report cannot be accepted. Thus, the report was rejected by order dated 2nd February, 2021. On the same day the petitioner had preferred an application for bail under Section 436 of Cr.P.C. in view of the report submitted by the Police. The said application was also rejected by order dated 2nd February, 2021. Learned Magistrate thereafter passed an order dated 8th February, 2021, that the Court is taking cognizance for offence under Section 304 of Indian Penal Code and Jail Authority was directed to produce the accused before him on 10th February, 2021.

5. The trial Court had observed that, on going through the charge-sheet filed before him, it was apparent that at that stage there is sufficient material available in charge-sheet to take cognizance of offence under Section 304 of IPC as charge sheet is mere conclusion

arrived by the Police which is not binding on the Court.

6. Prior to submission of the report before the Trial Court by the Investigating Officer the petitioner had preferred an application for bail before the Sessions Court which has been rejected by order dated 30th December, 2020.

7. The petitioner seeks quashing the order dated 2nd February, 2021 rejecting the report and the order dated 8th February, 2021 taking cognizance of offence under Section 304 of IPC. The contention of the petitioner is that the orders are patently illegal and contrary to well establish principles of law. The report submitted by the investigating agency indicated bailable offence and by rejecting the report, the petitioner continued to be in custody. It is also prayed that by setting aside those orders, the petitioner be granted bail. Since the issues are related to bail the petitioner has approached this Court.

8. It is pertinent to note that the FIR was registered for offence under Section 304. However, on completing investigation, report was submitted for offence under Section 304-A of IPC. The remedy for quashing and setting aside the impugned orders can be exercised before appropriate Court. The petitioner is at liberty to prefer application for bail independently before appropriate Court. It

is made clear that this Court has not adjudicated this petition on merits. Petition is disposed off.

9. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)