

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 734/2021.

Shabbir Gulab Pappuwale.

-VERSUS-

The State of Maharashtra, through P.O. Darwha, District Yavatmal.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S.P. Bhandarkar, Advocate for the Applicant.
Shri S.D. Sirpurkar, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.
DATE : DECEMBER 18, 2021.

Heard.

2. This is an application in terms of Section 438 of the Code of Criminal Procedure for grant of pre-arrest protection in Crime No.818/2021, registered with Police Station, Darwha, District Yavatmal for the offence punishable under Sections 302, 323 read with Section 34 of the Indian Penal Code.

3. At the instance of a report dated 27.09.2021, lodged by the Deputy Superintendent of Police, Washim the aforesaid crime came to be registered. In apprehension of arrest, the applicant

2

seeks for pre-arrest protection.

4. The case bears unusual facts relating to custodial death of one Sk. Irfan. The applicant is a police officer. It is the prosecution case that on 06.07.2021, deceased Irfan along with his companions named Amir Khan and Sk. Golu, were intercepted by the police on public road and brought to Washim Police Station. Sheikh Irfan died while in custody of police. Initially A.D. No.49/2021, was registered in which a preliminary enquiry was made. Later on the investigation was handed over to C.I.D. Amravati Unit. It was transpired from the autopsy report that final cause of death was "head injury". Moreover, some external injuries were found on the person of the deceased. The injuries were fresh. It was revealed that both companions of the deceased have informed to the medical officer that the injuries sustained by the deceased were of assault by someone.

5. During the course of initial enquiry it was revealed from Amir Khan and Sk. Golu, that the police took all of them in custody and had beaten. On the date of occurrence, i.e. on 06.07.2021 itself, brother of deceased namely Sk. Jabir filed a report with the police

3

alleging that total 4 police officers including the applicant beated Sk. Irfan, resulting into his death. Sk. Jabir, has informed in writing that on receiving information that the police took deceased Irfan, he went to the police station. He found that Irfan was lying dead in the police station, whilst others were in injured condition. Sk. Jabir enquired from Amir Khan and Sk. Golu, on which he learnt that police officers beated the deceased by fists blows, kicks and sticks.

6. While investigating the matter, police confronted with another story that the deceased Irfan sustained head injury by way of fall on cement road. The police have asked query to the medical officer, on which the possibility of sustaining head injury by fall was ruled out. Having regard to all these facts, the Deputy Superintendent of Police lodged a report against 4 police officers including the applicant for commission of aforesaid offences.

7. The learned Counsel appearing for the applicant would submit that absolutely there is no material against the applicant. Though Sk. Irfan died on 06.07.2021, however, after 84 days i.e. on 27.09.2021, report has been lodged. He would submit

4

that the applicant was merely a driver of the police vehicle, who had not participated in apprehending Sk. Irfan. The learned Counsel took me through an application dated 16.07.2021 filed by the brother of the deceased namely Sk. Jabir, along with other family members stating about accidental death of Irfan due to fall on cement road. Moreover, my attention has been invited to several affidavits filed by brother, wife of the deceased and Amir Khan who were present along with deceased Irfan. Those affidavits affirms the submission that Sk. Irfan was drunk at the relevant time and by fall, he sustained head injury in which he died.

8. Perused case diary with special reference to post mortem report and forensic opinion. Post mortem report indicates 9 external injuries on the person of deceased. The Medical Officer noted underscalp contusion present over mid-frontal region. There was un-displaced linear fracture over base of skull. The medical officer has opined the cause of death as 'head injury'. The injuries were fresh caused within 12 hours. Query report specifically says that the injuries were caused by hard and blunt object and there is no possibility of sustaining head injuries by fall. Prima

5

facie, the medical evidence assumes significance which supports the prosecution case about causing head injury as a result of assault by hard and blunt object.

9. This case is an example to demonstrate a discriminative approach of investigation, when the accused are police officers. On the date of occurrence i.e. 06.07.2021 itself brother of deceased namely Sk. Jabir has specifically filed written report to the police stating that named police officers [including the applicant] who had assaulted his brother resulting into his death. Despite clear signal, the enquiry under A.D.No.49/2021 was proceeded. It is revealed that after 10 days, the same Sk. Jabir [brother of the deceased], alongwith other family members gave an application to the police taking U-turn from his earlier version. This time, he has denied the case of assault but, reiterated that deceased Irfan died due to fall on cement road. Not only this, affidavits have been filed to that effect. I refrain from commenting more on this aspect. What was the occasion for these people to once again rush to the police station for giving clean chit to the assailants whose complicity was exposed on the date of occurrence itself.

6

10. Police diary contains a statement of Sk. Jabir dated 09.07.2021 and Sk. Golu dated 08.07.2021, which were recorded prior to projecting a different story. It emerges from both statements that at the relevant time police took deceased Irfan, Amir Khan and Sk. Golu to police station, handcuffed them and beaten. The said earlier version assumes significance. Despite that the medical evidence supports the cause of assault.

11. Pertinent to note that family members and friends of deceased are labourers. There is every possibility that they would succumb to the power pressure for taking a divergent stand. Though the applicant claimed that he was merely a driver, however, his role has to be ascertained by way of investigation. Prima facie initial report filed by Sk. Jabir, specifies that the applicant also participated in the assault. The matter is quite serious that a youth died with multiple injuries, while was in police custody. Unless the matter is thoroughly investigated, truth cannot be unearthed. Having regard to these facts, no case is made out for grant of pre-arrest protection. Criminal Application is therefore, rejected.

JUDGE

Rgd.