

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.291 OF 2022

DATTA HANUMANT KHOT
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Nilesh S. Ghanekar
APP for Respondent/State : Ms. V. S. Choudhari
Mr. Dhananjay A. Mane, Advocate to assist A.P.P.

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CORAM : S. G. MEHARE, J.

DATE : 24-06-2022

PER COURT :-

1. Heard Mr. Ghanekar, the learned counsel for the applicant, the learned A.P.P. for respondent/State and Mr. Mane, the learned counsel to assist the learned A.P.P.

2. At the outset, it must be mentioned that Mr. Ghanekar, learned counsel, argued for more than 50 minutes as if this is a final argument of the case after trial. The Court opened the inquiry report of the Judicial Officer about the custodial death of the deceased and told him that the report was against his client. However, he said that he wanted to convince the Court. He has referred to many documents to convince that on the alleged date of the incident, the applicant had duty outside the jail premises. He has a serious grievance against witness Manoj Machindra Jadhav, a jail guard. He went on arguing that Jadhav was feeling bad when the applicant, who was junior to him, was taking his

search before entering the jail. He also argued that Jadhav had a misunderstanding that the applicant complained against him that he was carrying a mobile handset inside the jail. On the complaint of the applicant, he was suddenly transferred. Since the learned counsel went on arguing unstopably, the scope of the bail hearing was brought to his notice, but he argued and said that his client had instructed him not to withdraw the application. Though the scope and limitation of the considerations of bail application were brought to his notice, he spent Court's time unnecessarily.

3. After having gone through the arguments, in nut-shell Mr. Ghanekar, the learned counsel, would point out that at the relevant time, the applicant was not present in the barrack and was on duty outside the barrack. The applicant was not allowed to enter the barracks inside of the jail. Considering his arguments, it is clear that he wanted to point out the 'plea of *alibi*'. He has pointed out that after the custodial death of the deceased, a report was lodged with the Police Station, Nazirabad. Zila Peth Police Station, Jalgaon inquired and found nothing adverse against the prison authorities. Thereafter, as per the provision of law, Director General (Prison) made the inquiry as per the mandate of law. In that inquiry also, nothing was found. However, after 14 days, when the witness Manoj Jadhav was transferred and when he learnt about the reason for his transfer, he gave a false and

incorrect statement against the applicant. He has also fairly conceded that the learned Judicial Magistrate conducted the last inquiry. He wanted to press into service the document showing his duty outside the jail gate. He has also argued that the deceased was a drunkard and was a chronic alcoholic with withdrawal symptoms. He was examined by Chemist and Doctor. He did not take the food; therefore, his physical condition was deteriorating.

4. Learned A.P.P. has pointed out that the deceased died within the prison premises. She would point out in the postmortem report that 21 injuries were found on the person of the deceased in all, and the cause of death was due to these injuries. Besides this, she has also pointed out that besides Manoj Jadhav, there is one witness Nasir, who is also stating against the applicant.

5. It is settled that while considering the bail application Court is not required to evaluate the evidence. The Court is required to see whether a *prima facie* case exists or not and to take into consideration the gravity of the offence, antecedents of the accused, and nature of participation of the accused in the commission of the offence. The Court must record the reasons for allowing or refusing the bail. This should be done without discussing the merits and demerits of the evidence.

6. So far as the plea of 'alibi' is concerned, the law is settled

that the plea of alibi must be proved with absolute certainty so as to completely exclude the possibility of the presence of the person concerned at the place of the occurrence. The distance between the place of occurrence and the place where the person claimed to be, is the essential factor for the plea of alibi.

7. The Court has gone through the inquiry report of the learned Magistrate. After examining various witnesses, the learned Judicial Magistrate has opined that the various prison authorities / employees, including the applicant, have been involved in the custodial death of the deceased.

8. After having gone through the police papers and inquiry report, there is *prima facie* evidence against the applicant. It is an offence of murder of the jail inmate, which is grave. The distance between the alleged place of duty and the incident was very short. The Court is not satisfied with the arguments advanced by Mr. Ghanekar, the learned counsel that the applicant has a strong case for anticipatory bail.

9. For the reasons stated above, the application is rejected.

10. Inquiry report of the learned Judicial Magistrate be returned to the learned A.P.P.

(S. G. MEHARE)
JUDGE