

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

CRIMINAL BAIL APPLICATION NO. 771 OF 2020

Hanmant Ningappa Kakandaki ..Applicant

V/s.

The State of Maharashtra ..Respondent

Mr. A.H.H. Ponda, Senior Advocate i/b Sachin Hande for the Applicant.

Mr. S.R. Agarkar, APP for the Respondent/State.

Dy. S.P. Vaishnavi Patil, CID Satara.

CORAM : C.V. BHADANG, J.

RESERVED ON : 4 MARCH 2022

PRONOUNCED ON : 8 MARCH 2022

P.C.

1. By this application, the Applicant is seeking bail in Crime No. 332 of 2016 of Police Station Karad City District Satara, under Section 302, 365, 324, 386, 323, 506 read with Section 34 of IPC.

2. The aforesaid offence, is registered on the basis of the complaint lodged by Hiraji alias Anil Dikole on 20.06.2016. The Applicant at the relevant time was working as Asst. Police Inspector attached to Police Station Karad. According to the

prosecution, the informant and his brother-in-law Raosaheb Jadhav (since deceased) were picked up by the Applicant and the other police staff attached to Police Station Karad City on 17.06.2016 in connection with a theft case. They were brought and detained at Karve Naka police chowki from 17.06.2016 to 18.06.2016, during which, the Applicant and the other police officers, who are accused in this case assaulted Raosaheb Jadhav with sticks and fist and kick blows after making a demand of Rs.25 lakhs. As a result of the injuries sustained, Raosaheb Jadhav died on 18.06.2016. The postmortem report shows the immediate cause of death as “head injury with blunt trauma to abdomen and to left testis”. The probable time of death is shown as 4.15 p.m. on 18.06.2016 at Sahyadri Hospital at Karad. On the basis of the complaint lodged, the offence came to be registered and after the investigation, a chargesheet is filed.

3. The learned Sessions Judge, has twice refused, to release the Applicant on bail.

4. I have heard Mr. Ponda, the learned Senior counsel for the Applicant and the learned APP. With the assistance of the learned counsel for the parties, I have gone through the record.

5. It is submitted by the learned Senior counsel for the Applicant that the Applicant is not involved in the incident of assault on the deceased Raosaheb Jadhav. It is submitted that

even taking the prosecution case as it is, no intention can be attributed to the Applicant to cause death of Raosaheb Jadhav. It is submitted that at the highest, this would be a case showing misplaced enthusiasm to carryout investigation in the theft case against the deceased. In short, according to the learned Senior counsel this is not a case where prima facie offence under Section 302 of IPC can be made out. It is submitted that the Applicant was arrested on 27.12.2016 and has completed about 5 years of imprisonment. It is submitted that the trial has not commenced and looking to the number of the prosecution witnesses cited in the chargesheet, it is unlikely that the trial would conclude in near future. The learned Senior counsel has placed reliance on the decision of the Supreme Court in *Union of India v/s. K.A. Najeeb*¹ in order to submit that considering the length of period spent by the accused therein in custody and unlikelihood of the trial being completed any time soon, the Applicant has been released on bail. The learned Senior counsel pointed out, that in that case, the accused was facing serious charge under the provisions of the Unlawful Activities (Prevention) Act. It is submitted that the Applicant has already been proceeded departmentally and has been dismissed and suffered enough for his alleged act and further detention in the prison is not justified.

6. The learned APP submitted that the offence is serious, wherein the Applicant and the co-accused, who were entrusted

1 2021 Cri. L.J. 1658

with the duty to enforce law have been found to have indulged into the assault on the deceased after he was taken into custody without showing any formal arrest. It is submitted that the deceased was brutally assaulted resulting into his death. It is submitted that the informant is the brother-in-law of the deceased and possibility of the Applicant interfering with the witnesses and tampering with the prosecution evidence cannot be ruled out.

7. I have considered the circumstances and the submissions made. At the outset, it is necessary to note that although the co-accused Nitin Kadam, Sumit Mohite, Atul Deshmukh and Sudhir Jadhav have been granted bail by this Court, no parity has been claimed with the said accused, nor does it arise on the basis of the record. It may be mentioned that co-accused Dilip Kshirsagar, who was working as a head constable has been refused bail by this Court by order dated 19.12.2017 in Bail Application No. 2127 of 2017. The role attributed to Dilip Kshirsagar is that he was standing as guard at the police station in order to facilitate the assault on Raosaheb Jadhav. The role attributed to the present Applicant is higher than the one attributed to Dilip Kshirsagar. The complainant who is the eye witness to the incident has stated that the present Applicant and the Police Inspector Dhus had assaulted the deceased. The contention that offence under Section 302 of IPC is not made out, cannot prima facie be accepted.

8. The record discloses that on 17.06.2016, the police from Karad City Police Station had picked up the informant and the deceased from Ghoti, Taluka Karad as the deceased was purportedly wanted in Crime No. 257 of 2016. Further, according to the prosecution, a demand of Rs.25 lakhs was made with the deceased for his release and on his refusal/failure to pay the amount, he was brutally assaulted, not only in Karve Naka police chowki, but even during the course of the transit at the secluded place by means of stick and the branches of the tree. The investigation further discloses that during the night intervening between 17.06.2016 and 18.06.2016, Raosaheb Jadhav was brutally assaulted. In the morning at about 5.00 a.m. on 18.06.2016, Raosaheb Jadhav was requesting to be taken the hospital, as he could not bear the pain. However, he was not taken to the hospital. The investigation also disclosed that at about 9.00 a.m. to 9.30 a.m., Raosaheb Jadhav was again assaulted after which he became unconscious and thereafter, he was taken to Sahyadri Hospital, when during the course of the treatment, he expired.

9. It is necessary to note that the allegations by any standard are serious. The Applicant being a police officer, responsible for enforcement of law has taken the law in his own hand, in which a suspect was picked up and brutally assaulted and done to death. As noticed earlier, the co-accused Dilip Kshirsagar having a

comparatively lessor role of guarding the police station in order to facilitate the assault, is not granted bail by this Court.

10. The decision in K. N. Najeeb (supra), in my humble view turned on its own facts. That was not a case involving a capital offence of murder. That apart, in that case, High Court of Kerala at Ernakulam had granted bail to the accused, which order was subject matter of challenge before the Supreme Court. The Supreme Court has observed that “had it been a case at the threshold, would have outrightly turned down the prayer for bail”. Yet another reason which weighted with the Supreme Court was that Section 43D (5) of the UAPA Act was comparatively less stringent than Section 37 of the NDPS Act.

11. Considering the over all circumstances, the application stands rejected. The trial is expedited.

12. It is made clear that the observations herein are essentially of a prima facie nature and the learned Sessions Judge shall not be influenced by the same at the trial.

(C.V. BHADANG, J.)