

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

ANTICIPATORY BAIL APPLICATION NO.2367 OF 2022

Mr. Rupani Venkatesh S/o Ramula	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Sanjiv P Kadam i/by Dilip B. Shinde, for the Applicant.
Mr. A. A. Palkar, APP for the Respondent/State.
Mr. Ranjit G. Jadhav, for the Intervenor.
Mr. Ravikiran T. Danvade, DYSP, CID, Nashik – present.

CORAM : NITIN W. SAMBRE, J.

DATE : 20th SEPTEMBER, 2022

PC.

1. Applicant, a public servant working as Police Inspector with Telangana Police is seeking pre-arrest bail in Crime No.I-172 of 2022 registered with Mumbai Naka Police Station, Nashik for the offence punishable under Sections, 166, 166-A, 223, 306, 348 r/w 34 of IPC.

2. The applicant is booked under Section 166 of IPC i.e. public servant disobeying law, with intent to cause injury to any person, Section 166-A of IPC i.e. public servant disobeying direction under law, Section 223 of IPC i.e. escape from confinement or custody negligently suffered by public servant, Section 306 of IPC i.e. abetment of suicide, Section 348 of IPC i.e. wrongful

confinement to extort property etc. and Section 34 of IPC i.e. common intention.

3. The facts necessary for deciding the present application are as under :-

In certain offences which were registered in Telangana, accused – Santosh Shinde was apprehended in Crime No.380 of 2019. Santosh Shinde disclosed names of Vijay Birari and Jaliya @ Santosh Sahane to whom he allegedly sold stolen gold articles. Applicant along with team of twelve policemen from Telangana reached Nashik for the purpose of investigation of the said crime. The team headed by applicant booked rooms in Government Rest House, took custody of Vijay Birari as disclosed by accused - Santosh Shinde and allegedly brought him to Panchavati Police Station. Without producing before the Magistrate as was duty bound under Section 56 of CrPC, he was taken to the Government Rest House where he was confined, tortured which has prompted him to commit suicide by jumping from fourth floor of Circuit House. As such, offence in question.

4. Mr. Sanjiv Kadam, counsel appearing for the applicant while trying case would strenuously urge that the applicant at the relevant time when the deceased Vijay Birari committed suicide was not present on the spot of the incident, as in discharge of his duty, he was in the field investigating the crime for which Vijay Birari was

taken in the custody. According to him, name of the Vijay Birari was disclosed by co-accused – Prakash Shinde. He would further urge that deceased was permitted to meet his wife – Sunita, brother – Rajendra and advocate – Samir Inamdar which discloses transparency maintained during investigation. He would urge that there is delay of two years in registration of offence, as the incident had occurred on 25th February, 2020. His further contentions are, applicant has never tortured the deceased while he was in custody. He would further urge that the co-accused who were in the custody alongwith deceased Vijay Birari have not supported the case of the prosecution. As such, according to him, there is hardly any material to infer involvement of the applicant in the offence. His further contentions are, he being a public servant, is very much available for investigation and that being so, he is liable to be released in the event of arrest.

5. While countering aforesaid submissions, learned APP would urge that delay of two years can be explained, as the incident has occurred on 25th February, 2020 whereafter immediately investigation was set in motion. According to him, the Investigating Officer/DySP from CID initially registered accidental death. In view of Corona pandemic lockdown was declared, the investigation came to a standstill. He would then invite attention of this Court to the fact that after inquiry into ADR, an offence came to be registered on 25th February, 2020 pursuant to the complaint lodged by DySP. He would further urge that till this date, appropriate investigation in

the matter is carried out. According to him, sufficient evidence is collected during the investigation so as to infer *prima-facie* involvement of the applicant in the crime in question. According to APP, the fact that deceased was illegally detained can be established from the events of the incident, so also statement of the eye witnesses viz. employees who were working with the deceased Vijay Birari, his wife, brother and lawyer etc.. Drawing support from the judgment of Delhi High Court in the matter of ***Sandeep Kumar Vs. State (Govt. of NCT of Delhi) & Ors.*** reported in ***2019 LawSuit(Del) 3320***, he would urge that applicant being head of the investigation team should have acted diligently in accordance with law. He submits that during investigation even lapses on the part of Senior Police Officials and the other Police Officials of the Panchavati Police Station are also noticed. He submits that according to him, default report is already submitted against Maharashtra Police in the matter for initiating departmental action. As such, according to him, application is liable to be rejected.

6. The fact that deceased Vijay Birari was taken in illegal custody on 24th February, 2020 is not in dispute. Applicant was duty bound to produce Vijay Birari immediately before the Magistrate under Section 56 of CrPC and to seek his transit remand. Instead, applicant has not only detained deceased Vijay Birari illegally but has also taken his staff in illegal custody, so also keys of jewellery shop, as could be inferred from the investigation papers. In the aforesaid background, intention of the applicant to commit criminal

offence of not only extortion, illegal confinement but also disrespect to the rule of law can be inferred.

7. The postmortem report of the deceased in categorical terms speaks of the deceased having suffered 22 injuries to which applicant owes explanation. Such injuries appear to be ante-mortem i.e. deceased suffered it before his death.

8. Statement of eye witnesses viz. wife of the applicant, namely - Sunita, brother - Rajendra and lawyer - Samir, the employees working in the shop, namely - Bhavana, Vaishali and Chandankumar sufficiently implicates applicant in the offence in question. From the statement of the aforesaid witnesses, it is apparent that the team headed by the applicant/accused has pressurized the deceased to give recovery of 2 kg. of gold. The applicant has taken away keys of the jewellery shop after locking the same. The said fact, in my opinion, is not looked into by the Investigating Agency particularly in the background of the fact that deceased having suffered ante-mortem injuries. The angle of extortion under threat is also required to be looked into and investigated.

9. The fact remains that the applicant, a public servant has behaved like private army while illegally detaining the deceased Vijay Birari. The postmortem report sufficiently speaks of the torture suffered by deceased while he was in illegal custody of the

applicant and other co-accused persons. Senior Police Officer of the Panchavati Police Station i.e. Senior Police Inspector and other officials appear to have acted in support of the applicant and his team thereby knowing fully that deceased Vijay Birari was detained illegally have intentionally not taken station diary entry. It was lawful duty of the officials from the Panchavati Police Station to ensure that deceased if arrested or taken in custody should have been ensured to have produced before the Magistrate.

10. The conduct of the applicant goes contrary to the judgment of Delhi High Court in *Sandeep Kumar (cited supra)*. The said judgment also deals with the issue as regards inter State investigation.

11. As regards issue of delay in registration of offence is concerned, the fact remains that immediately after death, ADR was registered and was under inquiry. However, due to pandemic and lockdown, progress could not be made in the investigation.

12. In this background, no case for grant of bail is made out particularly when the applicant is involved in serious offence which is till under investigation.

13. The application as such fails, rejected.

[NTIN W. SAMBRE, J.]