



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 589 OF 2023

Jitendra s/o Shenfadu Mali

Applicant

Versus

The State of Maharashtra

Respondent

Mr. N. S. Ghanekar, Advocate for the applicants

Mr. N. B. Patil, APP for the State.

Ms. M. P. Patil, Advocate holding for Mr. Dhananjay Mane, Advocate
for the informant.

WITH

ANTICIPATORY BAIL APPLICATION NO. 652 OF 2023

Petres s/o Joseph Gaikwad

Applicant

Versus

The State of Maharashtra

Respondent

Mr. A. K. Bhosale, Advocate for the applicant.

Mr. N. B. Patil, APP for the State.

Ms. M. P. Patil, Advocate holding for Mr. Dhananjay Mane, Advocate
for the informant.

CORAM : R. M. JOSHI, J.

RESERVED ON : 18th DECEMBER, 2023.

PRONOUNCED O N : 20th DECEMBER, 2023

PER COURT :

1. Applicants Jitendra Mali and Petres Gaikwad are Jail Circle Officer and Superintendent of Jail, Sub Jail, Jalgaon. They apprehend arrest in connection with Crime No. 548/2021 registered

with Zilla Peth Police Station, Dist. Jalgaon for the offences punishable under Sections 302, 143, 147 and 201 read with Section 34 of Indian Penal Code.

2. The allegation against the applicants is about custodial death of Ravindra Jadhav, an inmate of the said jail.

3. Wife of deceased lodged report with police alleging that her husband Ravindra was arrested by police and pursuant to the order passed by the Magistrate sending him in the judicial custody, he was lodged in Sub-Jail, Jalgaon on 10th September, 2020. On 11th September, 2020 he was taken to District Hospital, Jalgaon at about 10.05 pm. He was declared dead at 12.40 pm. Post Mortem was conducted wherein 21 injuries were found on his person. Cause of death is injury to chest. It is alleged by the informant that her complaint was not taken cognizance of and as such she was required to prefer writ petition bearing No. 1706/2020 before High Court seeking direction to take action against culprits. Since offence came to be registered during the pendency of petition, petition came to be disposed of.

4. Learned counsel for applicants amongst other submissions mainly relied upon the material collected during the course of investigation which according to them indicates that the applicants herein are not involved in the alleged offence. It is their contention that there is delay of about 1 ½ year in lodging of the report after the death of deceased. According to them, infact the crime has been recorded at the instance of one of the employees of jail, Manoj Jadhav, against whom disciplinary action was initiated and he was transferred to another jail. This, according to them, is the cause for filing false report against the applicants. They relied upon the statements of inmates of the jail particularly from barrack No. 3, 4 and 5 which indicate that no incident of assault has even taken place and that the death is caused due to alcoholic withdrawal symptom and other diseases. In order to further buttress their submission, reliance is placed on histopathology report indicating that deceased was suffering from tuberculosis of kidney and spleen etc. Reference is also made to medical papers showing opinion of Medical Officer about it being a case of alcoholic withdrawal symptom. Spot panchanama is also referred in order to argue that the statements of some of the witnesses who were in different barrack cannot be relied upon as they had no opportunity to see the

incident of assault owing to the wall in between obstructing their view. It is argued that statements of some of the inmates against the present applicants are for the reason that they were transferred against their will to another jail. They also submitted that there is inconsistency in the statements of these witnesses with regard to the occurrence of incident on 9th September, 2020, 10th September, 2020 and 11th September, 2023. It is also contended that the applicants are falsely sought to be implicated in this crime and hence they are entitled for pre-arrest bail.

5. Learned counsel for informant opposed the applications by contending that there is no delay in lodging of the report as a complaint was made within 14 days of the incident. It is stated that during the period of Covid-19 pandemic, the informant had her own limitation in perusing the case and according to her, all attempts were made to hush up the case. She, therefore, was compelled to file writ petition in order to lodge report in respect of the crime in question. By referring to the Post Mortem notes, it is stated that there were as many as 21 external injuries and the cause of death is specific which relates to injuries caused to chest. Thus, according to her, histopathological report is not relevant for deciding the cause of

death. It is also contended that the acts of the applicants who were incharge of the jail clearly show that they were trying to hide material facts as CDR was not made available and the power supply of CDR was disconnected.

6. Learned APP also opposed the applications by placing reliance on the statements of inmates who, according to him, have no reason to falsely implicate the applicants. It is submitted that the statements of the inmates were recorded much before they were transferred to another jail. It is further submitted that prima facie there is evidence on record to show involvement of applicants in the serious crime like murder. According to him, offence becomes more serious when murder has taken place while deceased was in custody of applicants. It is also submitted that anticipatory bail to similarly placed co-accused has been rejected and as such, according to him, it is a fit case for rejection of applications.

7. Offence of murder is serious in nature and it becomes more grave if it is a custodial death. Undisputedly, applicants were responsible for the affairs of the Sub-Jail, Jalgaon. Here it is not a case that applicants have failed to take appropriate steps for safety of

the inmates. There is direct allegation of they being personally responsible for the death of the deceased owing to assault caused to him. Perusal of charge-sheet indicates that on 10th September, 2020 Ravindra Jadhav was admitted in Sub-Jail, Jalgaon. On 11th September, 2020, at 12.05 pm, he was taken to District Hospital, Jalgaon. Perusal of medical papers shows that at that time his pulse rate and blood pressure was not recorded. While admitting him, it is mentioned to be case of withdrawal symptoms, however, this is not cause of death, ascertained by medical Officer. He was declared dead at 12.40 pm. Post Mortem report records that there were 21 external injuries on the person of the deceased. The cause of death is specific to say that death is caused due to injuries to chest. Though learned counsel for applicants sought to place reliance on histopathological report indicating deceased suffering from tuberculosis, however, prima facie, his death is due to injuries to chest and not owing to the diseases of the deceased. Thus, at this prima facie stage, it can be said that the deceased has met homicide death than natural death owing to diseases.

8. There are statements of witnesses who have seen present applicants causing actual assault on the deceased along with co-

accused. As rightly pointed out by learned APP that statements of inmates were recorded much before their transfer from Sub-Jail, Jalgaon to another jail and hence, their statements cannot be looked upon as tainted. As far as the statements of inmates of the barrack wherein the deceased was initially lodged are concerned, they are not relevant as those inmates did not see what happened outside the barrack. Correctness of allegations against Manoj Jadhav or veracity of his statement cannot be gone into at this stage in these anticipatory bail applications. Moreover, considering the fact that statements during investigation are recorded after lapse of some time and since the persons were lodged in jail at relevant time, any discrepancy in giving date would not be considered fatal at this stage. Suffice it to say that there are statements of witnesses who had seen present applicants causing assault on the deceased along with co-accused. There is every reason to believe that as a result of the said assault, the death of deceased is caused which is supported by medical evidence. Thus, this is a case wherein prima facie there is material to indicate that the applicants could be responsible for the death of deceased who was in their custody in the capacity of jail authority. Once prima facie involvement of accused is found in the serious offence like custodial death coupled with offence under

Section 302 of Indian Penal Code, such accused persons cannot be given benefit of anticipatory bail. Merely because charge sheet is filed against co-accused, investigating agency cannot be denied their custody for effective investigation.

9. In the result, both the applications stand dismissed.

(R. M. JOSHI)
Judge

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