

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.501 OF 2023

Umashankar s/o Manmath Kasture
Age: 53 years, Occu.: Service,
R/o. Shelgaon, Taluka Chakur,
District Latur.

.. Appellant

Versus

1. The State of Maharashtra
Through Police Station Officer,
Parli Vajjnath City Police Station,
Taluka Parli Vajjnath,
District Beed.

2. Laxmibai w/o Sambhaji Jogdand,
Age: Major, Occu.: Household,
R/o. Nagapur Camp, Taluka Parli
Vajjnath, District Beed.

.. Respondents

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Mr. S. S. Thombre, Advocate for the appellant.
Mr. A. M. Phule, APP for respondent No.1 – State.
Mr. U. L. Telgaonkar, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

RESERVED ON : 18th July, 2023

PRONOUNCED ON : 2nd August, 2023

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Present appeal has been filed under Section 14-A(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(hereinafter referred to as the “Atrocities Act”) to challenge the rejection of Criminal Bail Application No.225 of 2023 by the learned Special Judge, under the Atrocities Act/Additional Sessions Judge, Ambajogai, District Beed on 03.06.2023, thereby rejecting the application under Section 439 of the Code of Criminal Procedure filed by the present appellant. The appellant has been made as an accused in Crime No.340 of 2016 registered with Parali City Police Station, Dist. Beed for the offence punishable under Sections 302, 166, 167, 193, 217, 218, 220, 306, 330, 331, 348, 323, 201, 120(B) read with Section 34 of Indian Penal Code, under Section 3(2)(va) of the Atrocities Act and under Section 147 of the Maharashtra Police Act.

2. It is not in dispute that the present appellant is serving as Police Inspector. It is also not in dispute that prior to 13.08.2014, he was attached to the Police Control Room, Beed and thereafter he reported to Parali City Police Station. He came to be arrested on 11.05.2023 and since then he is in custody.

3. Before turning to the submissions, a brief account of facts is taken on record. An accidental death was reported vide A.D. No.22 of 2014 on 16.08.2014 on the report lodged by API, Vishwambhar Pallewad in respect of death of one Tukaram Sambhaji Jogdand. Said Tukaram alleged to be the suspect in a case of motorcycle theft and he was taken in custody of the Detection Branch and he was kept in Parali City Police Station. On

16.08.2014, he was medically examined in the hospital and was declared dead. As it was custodial death, the investigation was handed over to Crime Investigation Department, Beed. After the investigation was carried out by Smt. M. T. Danke, Police Inspector, Crime Investigation Department, Beed, offence under Section 306 of Indian Penal Code was registered against five police officials. The charge-sheet was also thereafter submitted. In fact, during the course of investigation by Crime Investigation Department, the appellant was shown as an accused and his statement was also recorded. However, in the charge-sheet he was not made as an accused. The said case was registered as Sessions Case No.07 of 2022. However, present respondent No.2 Laxmibai, who is the mother of deceased Tukaram, approached this Court by filing Criminal Appeal No.431 of 2022. She prayed for the writ of mandamus directing that Section 302 of Indian Penal Code be added and the matter be re-investigated. Affidavit-in-reply was filed by the Deputy Superintendent of Police, Crime Investigation Department, Beed. This Court by order dated 10.03.2023 directed the investigating officer to take appropriate steps by resorting to Section 173(8) of the Code of Criminal Procedure and to see whether Section 302 of Indian Penal Code can be included. Report from the doctors was called and submitted to Special Inspector General of Police (Crime - West) and Additional DGP, C.I.D., Maharashtra State, Pune. In spite of directions issued by this Court, steps were not taken by the investigating

officer but directly offence under Section 302 is stated to have been registered and the appellant came to be arrested.

4. Learned Advocate Mr. S. S. Thombre for the appellant vehemently submitted that though this Court in Writ Petition No.431 of 2022 had directed the investigating officer to take appropriate steps, yet no steps were taken, but directly offence was registered under Section 302 of Indian Penal Code. Initially, the offence is under Section 306 of Indian Penal Code. Present appellant, as per the charge-sheet that was filed, was the witness in the case and his statement was also recorded, but now he has been made as an accused. It has been alleged that the appellant has discharged the duty as In-charge Police Station Officer. When in fact there was no such order by the superiors, the appellant was sent to Parali Police Station, only for the *Bandobast* on account of two *Morcha's* those were organized. One was by *Dhangar* community and another by Communist Party. He was never in-charge of the case in which Tukaram was arrested. Tukaram can be said to be in the custody of Detection Branch, though he was lodged in the lockup of Parali Police Station. No offence was registered against the appellant under Section 306 of Indian Penal Code, then the question arises how he can be involved in the offence that came to be subsequently registered under Section 302 of Indian Penal Code. The CCTV footage of the police station has been collected, but it does not specify any role. He

had come to police station in the morning on 16.08.2014, however, Tukaram was taken out of the lockup in the evening. Even the supplementary charge-sheet does not show a specific role. No doubt, on certain occasions the appellant has signed as police station in-charge, but for that purpose he would face the Departmental Enquiry. On the basis of alleged lapse, it cannot be said that the appellant has taken part in committing murder of Tukaram. The statements of witnesses who are the police officers, who were present in the police station at the relevant time when deceased was taken out of the lockup and taken to hospital do not say that the present appellant was present even in the police station. The accused had taken room on rent in the hotel till his duty at Parali and he was present in his room at the relevant time. The learned Special Judge has not considered the requirements of enlarging an accused on regular bail. The entire investigation is over and charge-sheet is filed. The accused being the police officer, there is no question of tampering with the evidence. He is ready to abide by the terms of the bail.

5. Learned APP representing respondent No.1 – State and learned Advocate for respondent No.2 strongly opposed the appeal and they supported the reasons given by the learned Trial Judge while rejecting the bail application. It will not be out of place to mention here that respondent No.2 appears to have filed reply on affidavit before the learned Special

Judge when in compliance under Section 15-A of the Atrocities Act she was called upon to put forth her say to the application. The copy of the said say is made available and she has reiterated the facts of the case and also how the earlier investigation was tainted and she was required to approach this Court to seek justice. Of course, the said affidavit also suggests certain measures required to be adopted in such cases, where custodial death occurs in the police station.

6. It has been submitted that as per the supplementary statement, it has been transpired that the appellant resumed his duty at Parali Police Station on 13.08.2014. He himself has made a station diary entry that he has been sent for the purpose of *Bandobast*. However, it appears that the documents have been collected, which show that during 14.08.2014 to 16.08.2014, he has done the acts of sanctioning the leave of employees, signing on the official correspondence as in-charge of station diary entry and even passing the orders on wireless messages. He also hoisted the flag on 15.08.2014, in the capacity as Police Station Officer. Thus, he assumed himself to be the in-charge of police station between 14.08.2014 to 16.08.2014. Around 7.00 p.m. on 15.08.2014, Tukaram was brought by Police Naik Vishnu Nagargoje, Police Naik Sachin Sarnikar and Police Naik Vikas Waghmare by suspecting that he is the thief involved in motorcycle theft. No FIR was registered, though the informant had also come with the police officers to

the police station. Police Naik Sachin Sarnikar took the key of the lockup and kept Tukaram in the main lockup. Evidence to that effect is in the form of statement of eye witness and also CCTV footage. Thereafter, around 21.28 hours, on 15.08.2014, when Tukaram was in the lockup, the appellant had come to police station and went towards the lockup. He was in civil dress and then from lockup he came around 21.38 hours, went towards cabin of Police Inspector and then went outside the police station while talking on mobile. Ten minutes were spent by him in the police lockup and the evidence to that effect is by way of CCTV footage. Thereafter, on the next day between 9.00 a.m. to 11.30 a.m., he has kept the station diary charge to himself and then between 10.00 a.m. to 11.00 a.m. He has taken entry in his handwriting that there is no untoward incident. It further appears that he gave the charge of the station diary to Police Head Adabe around 11.30 a.m. With this evidence, it has been stated that though the appellant had the knowledge that Tukaram has been kept illegally in the lockup, yet he has not taken any steps. Tukaram was illegally detained for about 22 hours. The charge against the appellant in supplementary statement is that Tukaram was assaulted may be with an intention that he would give confession and when he expired, a scene was created that he has committed suicide by hanging himself. Therefore, now the charge-sheet is filed under Section 302, 166, 167, 193, 217, 218, 220, 323, 330, 331, 348, 201, 120-B read with Section 34 of Indian Penal Code,

under Section 147 of Maharashtra Police Act and Section 3(2)(va) of the Atrocities Act. It has been submitted on behalf of the respondents that a serious offence has been committed. A boy aged 25 years has lost his life and now the police officers are trying to save themselves.

7. Learned Advocate for respondent No.2 has relied on the decision in *Anil Kumar Tulsiyani Vs. State of U. P and another, (2006) 9 SCC 425*, wherein it has been held that, "Gravity and nature of offence is one of the considerations in granting bail which has to be addressed. In the said case, the accused was an Advocate and there was reasonable apprehension of the witnesses being tampered with or won over, coerced, threatened or intimidated by accused using his influence and position, was considered as one of the ground to reject the bail in non-bailable grave offence under Section 302 read with Section 201 of Indian Penal Code."

8. Almost all the facts have been narrated earlier and therefore, we are not repeating the same. Tukaram appears to have been taken to hospital on 16.08.2014. The autopsy has been conducted between 12.45 p.m. to 3.35 p.m. on 17.08.2014. As it was reported that it is a custodial death in the police station, it appears that the videography of the postmortem has been done and it was conducted in presence of Ms. Savita Choudhar, Sub Divisional Magistrate, Parali, District Beed. There were ten external injuries which were noted on the dead body and it is stated that all injuries were

fresh, recent and antemortem in nature. The probable cause of death is “postmortem findings are suggestive of death due to asphyxia due to hanging associated with head injury in the form of contusion scalp, subarachnoid hemorrhage and contusion over the body parts, however, final opinion as to the cause of death is reserved and viscera preserved for chemical analysis and organs for histopathology examination” The manner of death has been stated to be unnatural. Therefore, there is scope to see as to whether the death is by suicide or homicidal.

9. Initially, when the A.D. was reported and the investigation was done, the offence was under Section 306, 330, 331, 348, 323 read with Section 34 of Indian Penal Code and at that time, the offence was against police officer Vishwambhar Pallewad, Vishnu Nagargoje, Sachin Sarnikar, Vilas Waghmare, Hanumant Katkade attached to Parali Police Station and Detection Branch. There is sufficient evidence on record to show that Tukaram was brought to the main lockup on 15.08.2014 and it also appears that there was no FIR against him at that time.

10. Unfortunate part appears to be that the mother of the deceased was required to approach this Court for continuation of the investigation, in view of possibility of addition of Section 302 of Indian Penal Code, which appears to be not investigated by the then investigating officer. Thereupon, it appears that the investigation was taken over by the Deputy

Superintendent of Police, State Crime, Beed. Thereupon, the evidence has been collected to show that the present appellant assumed himself to be the in-charge of the police station and he has done some administrative acts as well as even held the charge of station diary between 14.08.2014 to 16.08.2014. The question is that when he had gone towards the lockup on 15.08.2014, how he could not have noticed presence of Tukaram. When he himself assumed the charge, whether he can get rid of the duty by saying that he was sent to Parali only for the duty of *Bandobast*. If his presence was only for the *Bandobast*, then why he assumed the charge of the police station. The personal liberty of the citizens in this country is of prime importance and such illegal detentions cannot be allowed in any form. Further, the illegal detention herein has turned out in the police custodial death. The gravity of the offence has increased more when it has been stated in the supplementary statement that when it was informed to the then District Superintendent of Police regarding the custodial death in the police station and he had asked the evidence to be preserved as it is, yet the weapon with which the deceased was assaulted was destroyed. Of course that may not be then attributed towards the present appellant, but his role would certainly be till 16.08.2014 when he handed over the charge of station diary around 11.30 a.m. The allegations of police atrocities in such form have been made and it is then stated that in the earlier round of investigation the appellant has given a false statement. Therefore, taking

into consideration the seriousness of the offence and there is *prima facie* evidence against the appellant, we do not find that the learned Special Judge has committed any error or illegality in rejecting the application under Section 439 of the Code of Criminal Procedure filed by the present appellant. We do not find any merit in the appeal. It deserves to be dismissed. Accordingly, the appeal stands dismissed.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm