

AGK

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

ANTICIPATORY BAIL APPLICATION NO.3372 OF 2022

Md. Khaja Khan ... Applicant

V/s.

The State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO.4591 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO.3372 OF 2022

Sunita Vijay Sonar (Birari) ... Applicant

In the matter between

Md. Khaja Khan ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Tejas Deshpande i/by Mr. Kishor Ajetroa for the
applicant in ABA/3372/2022.

Mrs. Rutuja Ambekar, APP for the respondent/State.

Mr. R.T. Darwade, Dy. S.P., CID, Nashik, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2023

PC.:

1. The applicant is seeking relief under Section 438 of the Criminal Procedure Code, 1973 in connection with First Information Report No.I-172 of 2022 dated 20 June 2022 for offence punishable under Sections 306, 166, 166(A), 223, 347 read with Section 34 of the Indian Penal Code, 1860.

2. According to prosecution, one Santosh Shinde was apprehended in Crime No.380 of 2019 registered in Telangana. He disclosed names of Vijay Budhu Birari and Jaliya Alias Santosh Sahane of having sold stolen gold articles. Team of policemen from Telangana reached Nashik for the purposes of investigation of the said crime. The team was headed by Rupani Ramulu Vyankatesh. They took rooms in Government Rest House and took custody of Vijay Birari and brought him to Panchavati Police Station. Without producing Vijay Birari before the Magistrate as mandated under Section 56 of the Criminal Procedure Code, 1973, he was taken to the Government Rest House where he was allegedly tortured and confined which prompted him to commit suicide by jumping from the fourth floor of the Government Rest House.

3. The applicant, therefore, approached learned Sessions Judge, who by order dated 28 July 2022 rejected the application. Aggrieved thereby, the applicant has filed present Anticipatory Bail Application.

4. This Court by order dated 20 January 2023 directed that “the applicant shall not be arrested till next date”. Said order was continued from time-to-time.

5. Learned advocate for the applicant submitted that the applicant has no connection with the investigation of the offence for which Rupani Ramulu Vyankatesh was investigating. The applicant was investigating some other offence. He merely accompanied his follow investigators. No active role is played by the applicant in the alleged crime of offence. He has cooperated

with the investigation. He is suffering from cancer. His statement under Section 164 is recorded and, therefore, his custodial interrogation is not necessary. The first information report has been lodged after two years from the date of incident.

6. Per contra, learned APP invited my attention to the first information report. The first information report, according to her, specifically states that accused Nos.1 to 3 jointly investigated the deceased. They failed to comply with the judgment of the Apex Court in **D.K. Basu v. State of West Bengal** reported in AIR 1997 SC 610. This is a case of custodial death and, therefore, no leniency needs to be shown to the applicant who is a public servant. He being protector of law, it casts additional responsibility on him to scrupulously comply with the provisions of law and duty cast by the precedents of the Apex Court. She invited my attention to the statements of three witnesses, namely, Chandankumar, Samir Inamdar and API Raghunath Shegar to point out the active role played by the applicant in the investigation of the deceased. She also invited my attention to the transcript of CCTV which shows the applicant in a vehicle carrying the deceased. She states that prior to ad-interim order passed by this Court, the accused was called upon to join the investigation around twenty times; however, he failed to turn for investigation. She, therefore, prayed for rejection of the anticipatory bail application.

7. Having perused the case diary, statement of witnesses, transcript of CCTV, prima facie following facts emerge: (i) three witnesses indicate role of applicant of active participation in the investigation of the deceased; (ii) the transcript of CCTV shows the

applicant in a vehicle carrying the deceased; (iii) the statement of Chandankumar attributes specific role to the applicant which indicates active role of the applicant in the investigation of the deceased; and (iv) statement of Raghunath Shegar, Police Inspector also attributes active role to the applicant to investigate the deceased.

8. Prima facie above circumstances indicate active participation of the applicant in investigating the deceased which, according to prosecution, resulted into suicide by the deceased.

9. The first information report specifically alleged all three accused of having taken joint custody of the deceased. At this stage, there is no material to indicate that the deceased was produced before the Magistrate within 24 hours. The postmortem report indicates 22 injuries caused to the deceased. Therefore, at this stage, prima facie it appears that the applicant coerced the accused/pressurized the deceased for recovery of 2 kg. of gold.

10. In so far as the contention of the applicant that there is delay of two years in registration of offence is concerned, it needs to be noted that ADR was registered immediately after the incident which was under inquiry. According to prosecution, the inquiry could not be completed due to pandemic situation. Considering the nature of offence and allegations made against the applicant, in my opinion, whether there was delay in lodging report of offence under Section 306 needs to be considered at the time of trial. The prosecution needs to be given opportunity to explain delay during trial.

11. This Court has already rejected anticipatory bail application of Rupani Ramulu by order dated 27 October 2022. Apart from the said fact, according to prosecution, despite around twenty notices issued to the applicant, he has not joined the investigation.

12. Personal liberty of a person needs to be balanced with right of investigating agency to investigate into the offence. Apart from necessity of custodial interrogation, nature and gravity of offence, seriousness of allegations and its impact on the society are also factors which the Court needs to consider at the time of granting order under Section 438 of the Criminal Procedure Code, 1973. Despite authoritative pronouncement of the Apex Court in **D.K. Basu** (supra) in the year 1997, incidents of custodial death have not abated. The police officers who are under the obligation to protect citizens and to enforce statutory duty cast on them, are under legal obligation to act in accordance with law.

13. The nature of allegations against the applicant and others are serious which has the effect of shattering confidence of public in the law enforcing agencies. To preserve such confidence, it is necessary that such officials entrusted with the statutory duty of performing acts in accordance with the duties cast on them under the law.

14. Learned advocate for the applicant further submits that the applicant is suffering from cancer. Considering the reasons stated above, namely, nature, gravity and seriousness of allegations, in my opinion, in the facts of the case, the applicant is not entitled to protection under Section 438 of the Criminal Procedure Code,

1973.

15. The anticipatory bail application, therefore, stands rejected.
No costs.

16. In view of disposal of the anticipatory bail application, nothing remains to be adjudicated in the interim application and the same stands disposed of. No costs.

(AMIT BORKAR, J.)