



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

ANTICIPATORY BAIL APPLICATION NO. 3533 OF 2022

Nilesh Maruti Patil

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Pradip Gharat, for the Applicant.

Mr. M. G. Patil, APP for the State/Respondent.

Dy. S. P. Syam Pawane, CID, New Mumbai, present.

CORAM: N. J. JAMADAR, J.

DATED: 5th OCTOBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant and the learned APP for the State.
2. This is an application for pre-arrest bail in connection with CR No.359/2021, registered with Koparkhairane Police Station, Navi Mumbai, for the offences punishable under Sections 304 and 166 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").
3. The applicant, who was posted as a Police Constable at Koparkhairane Police Station, has been arraigned for the aforesaid offences for having caused custodial death of Dinesh Chavan at Koparkhairane Police Station, alongwith co-accused Prakash Patil; P.H.C. and Ravindra Hamare; P.C..

Manisha Pradhan, Deputy Superintendent of Police, CID, Maharashtra State, after conducting an enquiry into the custodial death of Dinesh Chavan, lodged a report with the allegations that the enquiry into the death, traversing the statements of the witnesses, CCTV footages, medical opinion and CA Reports, revealed that on 13th August, 2021 in between 4.00 am. to 6.00 am. after Dinesh Chavan was brought at Koparkhairance Police Station, the applicant and co-accused Prakash Patil and Ravindra Hamare caused the death of Dinesh Chavan by assaulting him by means of fist and kick blows and sticks.

4. The learned Counsel for the applicant made an endeavour to impress upon the Court that the deceased had suffered death as he had fallen from a height. An endeavour was made to take the Court through the statements of the witnesses recorded during the course of investigation to bolster up the said contention.

5. In opposition to this, the learned APP invited the attention of the Court to an order passed by this Court on 10th March, 2023 in ABA/724/2023, preferred by co-accused Prakash Patil, whereby this Court declined to exercise the discretion in favour of the said co-accused. It was submitted

that the CCTV footages clearly show that the applicant alongwith co-accused assaulted the deceased in the police station. I have perused the panchnama of the CCTV footages which shows that the co-accused and applicant assaulted the deceased. The applicant is also shown to have participated in the assault by means of kick blows.

6. Mr. Gharat, the learned Counsel for the applicant, made an endeavour to draw home the point that the CCTV footages show that the applicant had assaulted the deceased only for 16 seconds. The CCTV footages further show that it was co-accused Prakash Patil, who had repeatedly assaulted the deceased.

7. I am afraid to accede to this submission. There is a clear evidence to show that the deceased was assaulted by the applicant and the co-accused in the police station. Presence of the applicant at the police station at the time of the said occurrence can hardly be disputed. It is true, co-accused Prakash Patil is shown to have unleashed multiple blows by means of stick and kicks. However that does not dilute the gravity of the offences. The material on record not only shows the presence of applicant at the time and place of occurrence but also the assault perpetrated by the applicant.

In the aforesaid view of the matter, at this stage, the probabilities sought to be pressed into service to explain away the cause of death of the deceased do not merit countenance.

8. Custodial death is a grave offence and brooks no tolerance at all. Direct evidence is rarely available. Often prosecution case hinges on the statements of co-police personnel. Circumstantial evidence thus plays a pivotal role. Where the CCTV footages show the role played by the applicant, at this stage, that constitutes a strong *prima facie* case.

9. In the case of *State of M.P. vs. Shaymsunder Trivedi and ors.*¹ the Supreme Court emphasised the gravity of offence of custodial death and the difficulty which the prosecution faces in successfully establishing the charge of custodial death. The observations in paragraphs 16 and 17 are instructive and hence extracted below:

“16. The High Court erroneously overlooked the ground reality that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that 'direct' evidence about the complicity of these respondents was not available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to

1 (1995) 4 SCC 262.

save their colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.

17. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve otherwise the common man may lose faith in the judiciary itself, which will be a sad day."

(emphasis supplied)

10. The aforesaid pronouncement was followed by the Supreme Court in the case of *Yashwant vs. State of Maharashtra*² wherein the Supreme Court enhanced the sentence imposed by the trial court as finding it insufficient and dis-proportional to the gravity of the offence. The Supreme Court observed, *inter alia*, as under:

"24. It may not be out of context to note that it is generally difficult to prosecute the custodial torture cases as the evidence available on record may not sufficient. It is in this context that Law Commission in its 113th Report published in 1985 had recommended inclusion of Section 114-B to the Evidence Act, but the same was never materialized into a statutory law. Further this Court in *State of M.P. v. Shyamsunder Trivedi* (1995) 4 SCC 262.

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32. In **Ratanlal and Dhirajlal's Law of Crimes** (27th Ed.), the author while discussing the sentencing under Section 330 of IPC notes as under-

The causing of hurt by a responsible police officer engaged in investigation of a crime is one of the most serious offences known to law and deterrent punishment should be inflicted on the offender.

(emphasis supplied)

33. The factual narration of the events portrayed herein narrate a spiteful events of police excessiveness. The motive to falsely implicate Joinus for a crime he was alien to was not befitting the police officers investigating crimes. The manner in which Joinus was taken during late night from his house for investigation ignores the basic rights this country has guaranteed its citizen. It is on record that injuries caused to the individual were in furtherance of extracting a confession. The *mala fide* intention of the officers-accused to undertake such action are writ large from the above narration, which does not require further elaboration.

34. As the police in this case are the violators of law, who had the primary responsibility to protect and uphold law, thereby mandating the punishment for such violation to be proportionately stringent so as to have effective deterrent effect and instill confidence in the society. It may not be out of context to remind that the motto of Maharashtra State Police is "Sadrakshnaya Khalanihrahanya" (Sanskrit: "To protect good and to Punish evil"), which need to be respected. Those, who are called upon to administer the criminal law, must bear, in mind, that they have a duty not merely to the individual accused before them, but also to the State and to the community at large. Such incidents involving police usually tend to deplete the confidence in our criminal justice system much more than those incidents involving private individuals. We must additionally factor this aspect while imposing an appropriate punishment to the accused herein.

35. In the facts and circumstances of this case, the punishment of three-year imprisonment imposed by the Trial Court under section 330 of IPC, would be grossly insufficient and dis-proportional. We deem it appropriate to increase the term of sentence to maximum impossible period under Section 330 of IPC i.e., seven years of rigorous imprisonment, while maintaining the fine imposed by the Trial Court. Accordingly, we modify the sentence to this limited extent."

11. It is pertinent to note that even the application preferred by another co-accused Ravindra Hamare came to be disposed of as withdrawn after the Court recorded that the participation of the said co-accused was evident from the CCTV footages. It would be suffice to note that the applicant is similarly circumstanced. And there is no qualitative difference in the role attributed to the applicant and Ravindra Hamare, the co-accused.

12. For the foregoing reasons, I am not inclined to exercise the discretion in favour of the applicant.

13. Hence, the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]