



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 137 OF 2024

Sugat S/o Narhari Sarwade ... Appellant

VERSUS

The Superintendent Of Police
And Another ... Respondents

.....
Mr. Nilesh S. Ghanekar, Advocate for Appellant
Ms. S.S. Joshi, APP for Respondent No.1 – State
Mr. N.U. Talegaonkar, Advocate for Respondent No.2
.....

[CORAM : NITIN B. SURYAWANSHI, J.]
DATE : 02nd APRIL, 2024

ORDER :

1. This appeal filed under section 14-A of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, takes exception to the order dated 19.01.2024 passed by learned Additional Sessions Judge, Ambajogai, below Exhibit-8 in Special Case No.50 of 2023.

2. Tukaram Jogdand, son of respondent no.2/victim was found dead in police lockup. Crime No.340 of 2016 was registered with Parli City Police Station, District-Beed for offences punishable under sections 306, 330, 331, 348, 323 read with section 34 of the Indian Penal Code. On 05.01.2021, charge-sheet was filed in the said crime and case is numbered as Sessions Case No.7 of 2022.

3. In criminal writ petition no.431/2022, Division Bench of this Court directed addition of section 302 of the Indian Penal Code, in the said crime and also directed further investigation under section 173 (8) of the Code of Criminal Procedure. On completion of further investigation, supplementary charge-sheet was filed against 9 accused persons for offences punishable under sections 302, 166, 167, 193, 217, 218, 220, 323, 330, 331, 348, 201, 120-B read with section 34 of the Indian Penal Code and under sections 147 of the Maharashtra Police Act and under sections 3(2)(va) of the Scheduled Castes Schedule Tribes (Prevention of Atrocities) Act, on 10.07.2023 and appellant came to be arrested on 26.05.2023. Allegations against appellant are that, when the appellant was on lockup guard duty at Parli City Police Station, deceased Tukaram Sambhaji Jogdand was brought there at 9.30 hours by D.B. police personnel, (1) Vishnu Nagargoje, (2) Milind Sarnikar and (3) Vikas Waghmare. When there was no offence registered against deceased, he was illegally kept in lockup. Appellant has taken false entry in the guard duty register that nobody in the lockup. It was the duty of appellant to give intimation to superiors that without there being any offence register, deceased was illegally kept in lockup. By not doing so, appellant helped D.B. police personnel. When the

deceased died in lockup, appellant did not disclose this information to superior officers. appellant was on night guard duty on the day of death of deceased in the police custody.

4. Heard learned advocate for appellant, learned APP for respondent no.1-State and learned advocate for respondent No. 2. Perused the investigation papers.

5. Learned advocate for appellant submits that appellant is arrested on 26.05.2023 and since then he is in custody. Co-accused No.1 Umashankar Kasture is released by the Apex Court on regular bail. This Court has enlarged accused no.4 Shivraj Gangadharrao Adabe on regular bail on 05.01.2024. He, therefore, submits that on the ground of parity also, appellant is entitled for bail. He further submits that trial is not likely to commence and conclude in near future, and therefore, appellant need not be detained in custody for indefinite period.

6. Learned APP and learned advocate for respondent no.2/victim vehemently opposed the prayer of appellant.

7. Learned APP, by relying on decisions of Apex Court in ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** (Criminal Appeal No.1834/2022), and ***Ajay Kumar Yadav Vs. The State of Uttar Pradesh & Ors.*** (Criminal Appeal No. ___ of 2024 arising out of

SLP (CRI.) No.9816/2023), submits that considering the fact that appellant is a police officer, whose involvement *prima facie* appears from the record, a strict view needs to be taken against him on the question of granting of bail. She submits that, accused no.1 was granted bail by the Apex Court as State failed to file counter to the appeal filed by accused No.1 Umashankar. According to her, bail granted to accused no.4 Shivraj Adabe by this Court, he does not stand on similar footing like that of present appellant. Further submission is, appellant was on night guard duty on the day of which the custodial death of deceased has occurred, and therefore, this *prima facie*, shows active involvement in the conspiracy of accused persons to commit custodial death of deceased. Hence, the appellant is not entitled for regular bail.

8. Learned advocate for respondent no.2/victim submits that as the State failed to file counter to appeal filed by accused no.1, the Apex Court has released him on bail. Here the State as well as victim are opposing the bail, and therefore, the appellant is not entitled for bail.

9. Appellant is arrested on 26.05.2023 and on completion of further investigation, supplementary charge-sheet is filed on 10.07.2023. All the nine accused in the

present crime are police personnel. As per the report submitted by the Investigating Officer, accused No.6 Balwant Saybanna Jamadar, Assistant Police Inspector, Accused No.7 Umashankar Manmath Kasture, Police Inspector and accused No.9 Shivraj Gangadharrao Adabe, Police Head Constable, are released on regular bail.

While releasing accused Umashankar, the Apex Court has passed following order:

“ Despite the stop order having been passed and earlier opportunities having been given to the State of Maharashtra, the respondent-State has not filed any counter affidavit so far. Today also request is made for further time which is declined.

Considering the facts and circumstances of the case and the period of incarceration of the petitioner, which is more than seven months, custody certificate to this effect is placed on record, we are inclined to grant bail.

Accordingly, the petitioner be released on bail subject to such terms and conditions as may be imposed by the Trial Court.

The Special Leave Petition is, according, disposed of.

Pending application(s), if any, shall stand disposed of.”

Accused Shivraj Adabe is granted bail by this Court vide order dated 05.01.2024.

10. There was nothing on record to indicate that bail granted to aforesaid accused is questioned by either prosecution or by the victim.

11. Considering the fact that charge-sheet is filed on 10.07.2023 and the trial is not likely to commence and conclude in near future and appellant being Police Head Constable is government servant, he is not likely to flee away from justice, appellant need not be detained for indefinite period. Apprehension of the State can be taken care of by imposing suitable conditions.

12. In *Ajay Kumar Yadav* (supra), the Apex Court has observed that, "*stricter view is required to be taken considering the fact that respondent no.3 is part of police force and allegation is that of custodial death, in which he has been implicated. In cases of this nature, having regard to the over all influence a member of the police force may wield in connection with a case against them pertaining to custodial death, a stricter view is to be taken on the question of granting bail.*

Secondly, the charge-sheet is under section 302 of the Indian Penal Code and the appellant has been enlarged on bail within 1 and ½ years of his detention. The alleged offence

is of grave and serious nature and that factor has not been properly considered by the High Court."

13. Case of ***Sumitha Pradeep*** (supra), is in respect of grant of anticipatory bail, wherein it is observed:

"There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail".

14. There cannot be any dispute about the aforesaid ratio of the Apex Court. However, in the facts of the present case, since three co-accused are already released on bail, and as the trial is not likely to conclude in near future, further pre-trial custodial detention of appellant is not necessary. Hence, the following order.

ORDER

- (i) Criminal Appeal is allowed
- (ii) Impugned order dated 19.01.2024 passed by learned Additional Sessions Judge, Ambajogai, below Exhibit-8 in Special Case No.50 of 2023
- (iii) Appellant Sugat S/o Narhari Sarwade be released on bail on furnishing Personal Bond and Surety Bond of Rs.15,000/- with one surety in the like amount in connection with Crime No.340 of 2016 registered with Parli City Police Station for offences punishable under sections 302, 166, 167, 193, 217, 218, 220, 323, 330, 331, 348, 201, 120(B) read with section 34 of the Indian Penal Code and under Section 147 of the Maharashtra Police Act and under section 3(2) (va) of the Scheduled Castes Schedule Tribes (Prevention of Atrocities) Act.
- (iv) Appellant shall not enter Parli Taluka until further orders.
- (v) Appellant shall not tamper the prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE