



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.494 OF 2024

Ravi s/o Sanjay Sadanshiv and others
Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Akot
City, District Akola and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J. M. Gandhi, Advocate for applicants.
Ms. H. N. Prabhu, APP for respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/08/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.169/2024 registered with Police Station Akot City, District Akola for the offence punishable under Section 302 read with 34 for the Indian Penal Code, the applicants approached this Court for grant of pre-arrest bail.

2. All the applicants are serving as a Police Constables at District Akola. On 16.04.2024 at about 8.42 p.m. one Sukhdev Mahadev Haramkar, resident of Sukli, who is the uncle of the deceased Govardhan Ganesh Haramkar had lodged the First Information Report alleging that on 15.01.2024, he was along with his nephew who was arrested by one Shri Rajesh Jaware, the Sub Inspector of Police Station, Akot and was carried to the Police Station Akot thereafter, he and three Police Constables had brought the said Govardhan at village Sukli and the houses of the said

complainant and Govardhan were searched. Nothing was found and on being asked as to why the houses were searched, he was brutally beaten and thereafter, the deceased was taken to the Police Station, Akot. In the Police Station again he was brutally beaten and thereafter, he was taken to the hospital i.e. Vighnaharta Hospital and during the course of treatment, he succumbed to the death. On the basis of the said report, police have registered the crime against the present applicants.

3. Learned Counsel Mr. Gandhi for the applicants submitted that with the false allegations, the present applicants are implicated in the alleged offence, in fact, no such incident has taken place. He submitted that the deceased had sustained the injuries in an accident, which took place on 10.01.2024 and due to the accidental injuries, he was admitted in the hospital and thereafter, succumbed to the death. He submitted that regarding the said incident, the statement of the informant was recorded on 20.01.2024 wherein he has specifically stated that the deceased met with an accident and therefore, he was admitted in the hospital and during treatment, he succumbed to the death. He further stated before the investigating agency that the deceased was in habit of drinking liquor.

4. The statements of the another witnesses namely Leela Ganesh Haramkar, Laxman Sukhdev

Haramkar and others were also recorded from which it revealed that the deceased met with an accident and sustained the injuries and due to the said accidental injuries, he succumbed to the death. He further submitted that as far as the involvement of the present applicants is concerned, the applicants have filed rejoinder and on affidavit they have stated that at the relevant time, the applicant No.1 was on weekly off i.e. on 11.01.2024 and had secured leave on 13.01.2024 and 14.01.2024 for his urgent family affair. Likewise, the applicant No.2 was also on weekly off on 15.01.2024 and applicant No.3 was on weekly off on 12.01.2024. The applicant Nos.4 and 5 were also on weekly off on 13.01.2024 and applicant No.4 has taken leave on 14.01.2024. He submitted that these documents and the various statements are recorded sufficiently show that afterthought i.e. after three months, the alleged FIR was lodged by the informant and the allegations are baseless and false. The falsity of the allegation revealed from the various statements of the witnesses. As far as the custodial interrogation of the present applicants is concerned, which is not required. In view of that, they be protected by granting anticipatory bail. He submitted that if the applicants are sent behind bars, their entire carrier would be ruined and considering the same, they be protected by granting anticipatory bail.

5. In support of his contention, learned Counsel for the applicant placed reliance on **Abdul**

Hamit Ansari and others Vs. State of Maharashtra reported in **AIR 2000 SC 3541 (1)**

wherein the Hon'ble Apex Court has considered the gravity of the offence and directions were issued to release the appellant on bail if appellants surrender before the police within two weeks. He submitted that such directions can be issued to the investigating agency and the applicants are ready to surrender before the investigating agency.

6. Per contra, learned APP strongly opposed the said application on the ground that all the applicants are Police Constables and the allegations against them are that on suspicion that the deceased is involved in a robbery. They have taken him in the custody and assaulted brutally thereafter, taken him to the hospital and while taking treatment, he succumbed to the death. She submitted that during investigation, the investigating agency has recovered the CCTV hard disk from the Police Station Akot City thereafter, various statements are recorded. The expert opinions are obtained from which it reveals that the injuries which are found on the person of the deceased are not possible by the accident. She submitted that the various statements recorded during the investigation shows that there are eye witnesses who have seen the deceased was assaulted in the Police Station by these applicants and other co-accused. She submitted that the consideration for grant of bail and grant of anticipatory bail are

different. In support of her contention she placed reliance on the decision of the Hon'ble Apex Court in the case of **Ajay Kumar Yadav Vs. The State of Uttar Pradesh and Others in arising out of SLP(Crl.) No.9816/2023** wherein the Hon'ble Apex Court had considered the consideration for grant of bail and observed that but this criteria, while dealing with the question of granting bail, would not apply in a case of custodial death, where police officials are arraigned as an accused. Such alleged offences are of grave and serious in nature. The role of the Court in dealing with the plea for bail in offences involving police officials has been explained by this Court in the case of **State of Jharkhand vs. Sandeep Kumar [2024 INSC 179]** and prayed for rejection of the application.

7. After hearing the learned Counsel for the applicants and learned APP for the State, perused the investigation papers from which it reveals that the crime is registered against the present applicants on the basis of report lodged by uncle of the deceased namely Sukhdev Mahadev Haramkar. On 16.04.2024 wherein he has alleged that the Police Officer Rajesh Jaware and the present applicants were searching the deceased and they suspected his involvement in a crime committed under Section 392 of the Indian Penal Code. Thereafter, the deceased was taken into custody and he was assaulted brutally.

8. It is further alleged that the informant was also assaulted by the present applicants and other co-accused and deceased was taken to the private hospital i.e. Vighnaharta Hospital, Akola wherein he died. Admittedly, prior to the registration of the crime, the statement of the informant and other witnesses were recorded wherein they have stated that deceased met with an accident and due to the accidental injuries, he succumbed to the death. The death of the deceased was occurred on 17.01.2024 therefore, the accidental death was registered.

9. During the investigation, the police officials have received one anonymous letter and on the basis of the anonymous letter, investigation was carried out. During the investigation, the Investigating Officer has recorded the statement of informant Sukhdev Mahadev Haramkar, wherein he has narrated that the Police Officer Rajesh Jaware taken the custody of his nephew on 16.01.2024 and he was assaulted in presence of the villagers and taken him to the Police Station and was assaulted. The deceased has sustained the grievous injuries and therefore, he was taken to the hospital and during treatment, he succumbed to the death. The inquest panchnama which was drawn shows that there were several injuries observed on the person of the deceased and the death of the deceased was shock due to the multiple blunt injuries. The postmortem report shows in all 25 injuries are found on the

person of the deceased. Considering the earlier statement that deceased has sustained the injuries due to the accident, the opinion was sought from the medical expert wherein the medical expert has opined that these injuries are not possible due to the accident. The said opinion is a part of the investigation papers. Thereafter, the panchnama regarding spot of incident has also drawn.

10. During investigation, the Investigating Officer has recorded various statements of the witnesses, from which it is revealed that the deceased was taken to the hospital on 17.01.2024 in a private hospital and where he was succumbed to the death. The statements of the witnesses further shows that the witnesses are acquainted with the Police Officer Shri. Jaware. Shri. Jaware has visited the house of the deceased as well as the informant and taken the search of the house, but nothing was found and thereafter, witnesses were also inquired regarding the mobile phone and some of the witnesses were also assaulted by the Police Officer as well as his colleagues. The informant was also referred to the hospital and he was treated there.

11. The statement of Deepak Dilip Pawar discloses that he came out from the work and at about 5.30 p.m. PSI Jaware, Manish Kulat who is applicant herein came on two wheeler and inquired with the deceased Govardhan and the informant. He

further stated that PSI Jaware disclosed to him that Govardhan i.e. deceased has disclosed his name and therefore, he has to inform about the mobile and where it was kept or hidden and he as well as the family members of the deceased were assaulted. Thus, various statements were recorded by the Investigating Officer to show that the deceased was assaulted by taking into the custody on suspecting that he is involved in a robbery case.

12. The statement of the Medical Practitioner Dr. Vishal Prakash Ingole was also recorded from his statement it reveals that on 17.01.2024 he received the phone call of Police Officer Jaware who was inquired about the patient by name Govardhan i.e. the deceased and regarding his condition and also disclosed to him that he has dropped the said patient in the Vighnaharta Hospital. There are some statements including the statement of Pramila Dadarao Tayade, Gangadhar Pundlik Gawade and Sheikh Salim Sheikh Jamir that the PSI Jaware and others visited the house of the deceased and taken the search of his house thereafter, they have taken both of them in the police vehicle and subsequently, they came to know that Govardhan succumbed to the death.

13. Thus, the entire statements of the witnesses shows that deceased was in the custody of the Police Officer Jaware and the present applicants.

As far as the contention of the learned Counsel for the applicants that at the relevant time these applicants were not on duty either they were on weekly off or on leave is also falsified by the duty chart which is obtained by the Investigating Officer which shows that from 07.01.2024 to 17.01.2024 they were on duty.

14. The general diary entry which was taken on 09.01.2024 also shows that the crime was registered under Section 392 of the Indian Penal Code. The Police Officer i.e. PSI Jaware and the Crime Detection Branch Police Constables visited the bus stand and checked the CCTV footage. After checking the CCTV footage, they were searching the deceased Govardhan Haramkar, but he was not found and therefore, they have searched various places in search of him. Thus, the general diary entry also shows that the present applicants and other co-accused were in search of the deceased. Thus, the various statements recorded during the investigation clearly shows that the deceased was in the custody of the present applicants and other co-accused and when he was in custody he sustained the injuries and due to the injuries, he succumbed to the death. Thus, this case is of a custodial death. The confidential communication issued also shows that the confidential inquiry was conducted and from the said inquiry it reveals that the Police Officer Jaware and the present applicants are involved in

taking custody of the deceased and thereafter assault on the deceased. The statement of some of the witnesses were recorded under Section 164 of the Code of Criminal Procedure which also shows the involvement of the present applicants in custodial death of the deceased.

15. Thus, *prima facie* case is made out against the present applicants as far as the their involvement in the alleged incident is concerned.

16. Learned Counsel for the applicants vehemently submitted that initially there was an accidental death registered regarding the death of the deceased and afterthought, this complaint is filed. But at this stage, the statements of various witnesses, opinion of Medical Officer and the circumstantial evidence sufficiently shows the involvement of the present applicants in the alleged offence. There is no dispute as to the fact that the discretion to grant or refuse him must be exercised judiciously and in a judicious manner. It is also well settled that bail is rule and jail is an exception, but at the same time, the considerations for grant of anticipatory bail are to be taken into consideration. The considerations for grant of anticipatory bail are gravity of the offence, the involvement of the applicant, the nature of the offence and the punishment provided for the said offence.

Admittedly, the present applicants are involved in the grievous offence i.e. the custodial death.

17. Learned APP rightly placed reliance on the decision of the Hon'ble Apex Court in the case of **Ajay Kumar Yadav Vs. The State of Uttar Pradesh and Others** (supra) wherein the Hon'ble Apex Court by referring the judgment of **State of Jharkhand vs. Sandeep Kumar** (supra) wherein it is observed that "In the light of these serious allegations made against no less than a senior police officer, an essential cog in the machinery of law enforcement, the High Court ought not to have taken a liberal view in the matter for the mere asking. Considering the position held by the respondent, even if he was suspended from service and the chargesheet had already been filed against him, the possibility of his tampering with the witnesses and the evidence was sufficiently high. That apart, grant of such relief to a police officer facing allegations of manipulating the investigation so as to favour an accused would send out a wrong signal in society. It would be against public interest." It is further observed that "No doubt, none of the provisions under which the respondent is alleged to have committed offences entail imprisonment in excess of seven years and most of them were bailable offences. Ordinarily, an accused facing the prospect of incarceration, if proved guilty of such offences, would be entitled to the relief of pre-arrest bail. However,

the same standard would not be applicable when the accused is the Investigating Officer, a police officer charged with the fiduciary duty of carrying forward the investigation to its rightful conclusion so as to punish the guilty. The 6 respondent is alleged to have failed in this fundamental duty as a police officer. This consideration must necessarily weigh in with the nature of the offences and the possible punishment therefor. Presumptions and other considerations applicable to a layperson facing criminal charges may not carry the same weight while dealing with a police officer who is alleged to have abused his office."

18. In the case of **Ashok Kumar Chaudhary Vs. State of Bihar and others** reported in **2024 SCC OnLine Pat 2524** wherein also it is observed by the Patna High Court that in the kind of serious allegations, this Court is of the considered opinion that these petitioner(s) do not deserve privilege of anticipatory bail and their bail was refused.

19. The aspect of the custodial death is also considered in the case of **Parvat Chandra Mohanty vs. State of Odisha and another** reported in **(2021) 3 SCC 529** wherein it is observed by the Hon'ble Apex Court that in the event people holding public office abuse their position, it becomes a matter of great public concern. When the police is violator of the law whose primary responsibility is to protect the law, the punishment for such violation has to be

proportionately stringent so as to have effective deterrent effect and instill confidence in the society.

20. By referring the earlier Judgment of **Yashwant Vs. State of Maharashtra (2019) 18 SCC 571** the Hon'ble Apex Court held "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 Khalanighrahanaya" (Sanskrit: "To protect good and to punish evil"), which needs 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 on the accused herein."

21. In the light of the above observation, if the facts of the present case are taken into consideration, it reveals that the deceased was taken into custody on suspecting that he is involved in crime under Section 392 of the Indian Penal Code, thereafter he

was mercilessly beaten and taken to the private hospital wherein the death of the deceased is caused.

22. The investigation is at initial stage, considering the role of the present applicants, it reveals from statements of the various witnesses as well as the opinion of the expert, no case is made out for grant of anticipatory bail, in view of that, application deserves to be rejected. Accordingly, the application is **rejected**.

23. As far as the prayer made by the learned Counsel for the applicants is concerned that the applicants are ready to surrender before the investigating agency, they are at liberty to surrender before the investigating agency and the bail application if filed can be considered on its own merits.

24. The application is **disposed of**.

(URMILA JOSHI-PHALKE, J.)