

JOINT ORDER ON REMAND REPORT OF ACCUSED NO. 1 TO 3 IN C.R. NO. 59/2018 BEFORE ALIBAGH POLICE STATION

1. Accused No. 1 Arnab Goswami after his medical examination was again produced before me today at 5.15 pm in the evening along with his medical reports. That I am considering the remand report of Accused no. 1 as I found no fact in his allegations of physical assault on him.
2. Accused No. 2 and 3 were produced before me 8.15 pm in evening and stated no complaint of physical assault against the Police. Advocate for all Accused persons made their representations.
3. APP Shri. Mahakal, IO Shri. J.A. Shaikh present. All Accused were produced under section 306 a/w sec 34 of the Indian Penal Code, 1860. IO demanded 14 days of police custody. Read case diary, remand report and F.I.R.
4. APP Shri. Mahakal argues that on 05/05/2018 deceased Anvay Madhukar Naik committed suicide at Mauje Kaavir, Taluka. Alibaug, Dist. Raigad and left a suicide note in which it was mentioned that the deceased was yet to receive money from the Accused persons with respect to work done by him in the business. Therefore, in spite of repeated requests and demands by Shri. Anvay Naik, the accused persons failed to repay him for his work done. Also, other contractors were constantly demanding money from Shri. Anvay Naik due to which he was suffering from mental stress and torture leading him to commit suicide owing unbearable pressure. That on 05/05/2018 the complainant Akshata Anvay Naik filed complaint and F.I.R regarding the said suicide.
5. APP further states that after the investigation, 'A' Final summary report was submitted as no evidence was discovered which was allowed by the Hon'ble Court. Further that on complaint of Akshata Anvay Naik the investigation was restarted in which evidence was found against Accused No 1 to 3. That in reference to this the investigation is still on to find more

evidence. Therefore, the APP states that for proper and detailed investigation, the police custody of Accused to 1 to 3 is necessary. Demanding the police custody of all accused persons the APP and IO states that the accused persons failed to cooperate in the investigation and accused no.1 tried to avoid arrest. It is necessary to investigate the communications and mail exchanges that took place between all the accused persons after the said incident. They further state that they want to acquire information and documents of the companies and partnership details of the Accused persons. That as the deceased left the work of his business establishment incomplete, the said work was being done by other vendors. However, the accused persons failed to make payment till today to the deceased for the work done by him. The names of other vendors were not found in the earlier investigation and hence it is important to investigate regarding this aspect. They further state that the Accused persons are required to be taken in the police custody for acquiring documents from them which will be necessary for carrying out investigation and also to seize money from them. Overall point no. 1 to 14 in the remand report specifies that reason of demanding police custody of the accused persons and on the basis of this reasons APP and IO prays for 14 days police custody of all accused persons.

6. Advocate Shri. Ponda argued on behalf of Accused no.1 through Video conference that the arrest of Accused No.1 itself is illegal and without any legal base. That the said incident was took place in the year 2018 in which A summary report was submitted and was allowed by the Hon'ble Court. The said order was neither cancelled by any higher Court nor the complainant challenged the said order. Therefore, the allowed said A summary is still in existence. He further states that the said arrest itself is illegal as no evidence was found against the Accused No.1 in the investigation till date and taking this into consideration the Accused no.1

was arrested by the police without serving any notice or summons in the year 2020. No strong reasons have been stated by the IO for police custody of Accused No.1. The Counsel further argues that as per various judgements of the Hon'ble Supreme Court, the police custody of the Accused is necessary only in exceptional cases. He states that the police custody is not a rule but an exception for which strong reasons are necessary. Marking this point, the counsel further states that IO failed to produce before the Hon'ble Court any strong evidence against the Accused No. 1 and neither stated any reason for not serving any notice before his arrest.

7. The counsel further states that the arrest of Accused No. 1 is only an illegal exercise of power by the police. Counsel further states that the Accused no.1 assures to repay entire amount payable to the deceased under protest. Therefore, there was no reason to arrest the accused no.1. The Accused No.1 is cooperating in the investigation of the said crime and hence no police custody of accused no.1 is required. Therefore, on the basis of the above points the counsel prays judicial custody for the accused no.1.
8. On the arguments of the counsel for Accused no.1, the IO shri. Shaikh replies that, there were some errors in the earlier investigation. It is important to investigate the communications and email exchanges between all the accused persons and hence the police custody is necessary due to their non-cooperation in the same.
9. The counsel for accused no. 1 convinces the Hon'ble Court that the accused no.1 cannot be held liable for the errors in the earlier investigation. In reference to this the counsel further questions that what action was taken against the former IO for committing the errors? The counsel points out that the earlier entire investigation was carried out on the basis of information provided by the accused No.1 and hence it cannot

be said that the accused failed to cooperate in the investigation. Therefore, the counsel prays for judicial custody of the accused no.1.

10. The reasons for police custody of Accused No.2 & 3 are same. The APP states that the names of accused no.1 to 3 were mentioned in the suicide note along with the reason for his suicide. Therefore to find out whether all the accused met before the incident is required to be investigated and hence they pray for police custody of all the accused.
11. The counsel for Accused No.2 Smt. N. A. Raut argued that A summary report is filed and allowed in this incident and none has challenged the said report. There is no evidence since the date of incident i.e. 5/5/2018. As mentioned by the IO, there is no incidence of breaking 3rd floor. Moreover, there was no contract between the accused no.2 and the deceased and he was being paid for the work done by him. In this way the accused no.2 has paid a total sum of Rs. 4,78,39,521/-. So, what about the money already paid by the accused no.2? The counsel further states that, if the charge is that the repeated demands by the contractors has abated the deceased to commit suicide, then in this case, the real victims and distressed are the contractors. Therefore, there is no reason for deceased to commit suicide and make the accused responsible for the said act. The accused no.2 is only being arrested to extract money from him. The counsel further questions that was any action being taken against the former IO for the committed errors or did the complainant took any actions against the same? This was only a civil dispute. Therefore, there is no reason for police custody of the accused. Further counsel states that till date there is no proof of the said suicide note and hence the investigation on basis of the said note is meaningless. Therefore, the counsel prays for the judicial custody of the Accused no.2.
12. APP replies to the arguments by accused no.2 that the deceased has only received a part payment. Replying to which the counsel for accused

no.2 states that the accused no.2 has paid entire due to the deceased and they also have proof of the cheque payment.

13. Further the counsel for Accused no.3 Shri. Vijay Agarwal argues on the legal points that the said case, F.I.R and the process of arrest is not in accordance with law. The counsel points out the F.I.R and states that changes/rectifications have been made in the F.I.R. where sec 34 was added in writing before section 306 of the Indian Penal Code. The counsel further states that when in reality an 'A' summary report is already been filed and allowed by the Hon'ble Court, the police are left with no legal right to investigate in this case. He states that the as per section 10 of the Indian Evidence Act the case filed by the prosecution is baseless. As per the pressed charges all the accused met each other before the said incident. However, as per the law it is necessary to consider the events occurred before the said incident. The counsel states that before demanding the police custody it is important for the investigating agency to prove that before the said incident all the accused discussed planned and executed together the incident with conspiracy. However, no such evidence is being put forth by the investigating agency and therefore no criminal case can be filed against the accused in reference to said incident. only a civil dispute can be filed.

14. Counsel further states that the Accused no.1 assures to repay entire amount payable to the deceased under protest. That the accused no.3 has cooperated in the investigation and hence there is no necessity of police custody. The section under which the accused persons are charged with is not applicable in the said case. He states that it is necessary to take place such events and act by the accused persons to charge them with section 309 of the Indian Penal Code. However, from the proves produced before the Hon'ble Court no such act or event is discovered and hence, the

accused cannot be held liable for the suicide of the deceased and cannot be held in police custody.

15. Replying to the counsel of Accused No.3, APP and IO states that on the basis of the available evidence, it shows that the accused no.1 to 3 have committed the offence, they have recorded the statements of the witnesses. All the necessary documentary and electronic evidence has been gathered. On the basis of this background the police are demanded only on the grounds for which the accused persons are answerable. Therefore, for a detailed investigation they pray for police custody of the all accused.
16. Heard arguments of both sides through physical and video conference. The F.I.R shows that the said incident took place on 5/5/2018 and C.R. No.59/2018 was filed. A summary report was filed as no strong evidence was found against the accused persons which was allowed by the Hon'ble Court. That the said A summary report is still in existence and neither challenged by the complainant or any other person and also not cancelled by any higher Court. The IO Shri Shaikh stated a new investigation without the permission of the Court for the same. It shows from the application dated 15th October, 2020 filed before the Hon'ble Court that the said application was filed only for carrying investigation under section 173-8 of the Cr.P.C. The present report mentions the order passed on the said application. The said report is only being seen and registered and nowhere it seems that permission of the Hon'ble Court was allowed.
17. The IO Shri. Shaikh has attached the case diary along with the present remand application and in the same I find no legal base in the objections. Hence, I am not considering the same.
18. Overall, considering the objections raised by the accused no.1 to 3 against the police custody it seems that the arrest of the accused itself is illegal and not accordance with law. Going through the documents

carefully, the death of both the deceased, the relation between two deaths and the relation between the deceased and the accused persons is required to be established before demanding the police custody of the accused. The police custody of the accused persons can be demanded only if the series of events are unbroken. For the sake of argument, if money was receivable to the deceased from accused persons due to which other contractors were demanding money from the deceased than why did Kumodini Naik committed suicide? And was it a suicide at the first place? There is no appropriate or joint answer provided by the prosecution. The reason of Kumodini Naik's death, the relation between death of Anvay Naik and Kumodini Naik and relation between the accused persons and both deceased cannot be established in continuity.

19. How did the earlier investigation was left incomplete? How did the errors were committed in it? There are no strong evidences put forth by the prosecutions answering the above questions. Therefore, police custody of the all the accused cannot be backed up.
20. The main attack of the accused persons on the investigation is that the suicide note is not yet proved and hence investigation on basis of same cannot be acceptable. The present suicide note is yet to be to prove in evidence therefore cannot be thought about it at the present stage of recording evidence. Therefore, I don't accept the arguments put forth by the all accused with respect to the suicide note.
21. As per the criminal law, for acquiring police custody prima facie evidence and important information is necessary to be established from the accused persons. It is necessary to bring strong evidence regarding which the accused will be questioned in the police custody. However, the reasons mentioned for the police custody of the accused persons in which they will be physically questioned and verified are not sufficient. All the reasons mentioned in the remand report are related to email, folder, chemical

laboratory report, various types of work order, companies of all there accused and company of the deceased, different contracts between them and work orders, related measurements, give and take of economic compensation, various debit notes, various correspondence, various economical and business transactions. The reasons of demanding the police custody is completely based on technical and documents. Hence, the necessity of police custody of the accused persons couldn't be established by the prosecution.

22. On checking the remand report, it can be found that investigation had started, and statement of the complainant and witnesses were recorded along with the statement under section 164 of Cr.P.C before the arrest of the all accused. It has been mentioned in the report that the present investigation is going positively. IO Shri Shaikh states notices have been served to 28 witnesses out of which 17 witnesses appeared for investigation. The laptop and mobile of the deceased have been sent to judicial scientific laboratory for checking. Also, the bank account no. of the deceased and the accused persons and details of the transactions are being verified by the experts. Hence, as the investigation is progressing and in the absence of strong evidence against the accused persons, the police custody of the accused does not seem to be acceptable.

23. The counsel for the accused no.1 to 3 have cited the following judgments of the Hon'ble Supreme Court: -

- i. Euro School Education Trust Vs. Divisional Fee Regulatory Committee, Pune and Ors. Bombay High ? Court Writ Petition No. 7594 of 2017
- ii. Harshad S. Mehta Vs. C.B.I, 1993, JCC 118, dtd. 01/10/1992.
- iii. Satyajit Ballubhai Desai and Ors. Vs. State of Gujrat, (2014)14 Supreme Court Cases 434

- iv. Inderjit Singh Grewal Vs. State of Punjab and Anr., (2011) 12 Supreme Court Cases 588
- v. C.B.I. Vs. Anupam J. Kulkarni, S C. Cri. Appeal Nos. 310-311 of 1992 decided on 08/05/ 1992
- vi. Joginder Kumar Vs. State of U.P., S.C. W.P. No. 9 of 1994, decided on 25/04/1994

I would like to mention that, I will consider the above judgments only when there is no provision of law or if there is any confusion. Where there is provision of law, I won't consider the above judgments.

24. As mentioned by me in the beginning nothing has been seized from the accused persons. Whatever is seized it is from the deceased and the complainant. The background of the said incident cannot be prima facie proved. Also, the relation of the accused with the said incident cannot be prima facie established for acquiring the police custody of the accused. Hence on this basis A summary report gets allowed. The investigation restarts even after the said report being in existence till date and hence no lawful, appropriate reasons are found for the police custody of the accused persons. Moreover, the report does not mention the individual role of all the accused with regards to said crime. I again mention that A summary report was filed and allowed due to lack of strong evidence against the accused persons and hence, no strong reason has been found for the police custody of all the accused and hence it will be appropriate to reject the remand application for police custody.

ORDER

Accused No.1 to 3 is hereby granted judicial custody till 18th November, 2020.

Place: Alibaug

Date: 4th November, 2020