

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.**

CRIMINAL APPLICATION NO. 6128 OF 2014

SHEKHAR S/O PRALHAD MALSHIKHARE.
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER.

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Appearance =>

Mr. H.D. Deshmukh, Advocate for the Applicant.

Mr. U.H. Bhogale, Additional Public Prosecutor for the State of Maharashtra.

Mr. A.M. Gaikwad, Advocate for Respondent No.2.

CORAM : V.M. Deshpande, J.

DATE : 10th April, 2015.

Per Court :-

Present Criminal Application is filed by the applicant for cancellation of anticipatory bail granted in favour of Non-Applicant No.2, by the learned Additional Sessions Judge, Beed on 03/11/2014 in Criminal M.A.No. 623/2014 in connection with CR No. 153/2013 registered with Ashti Police Station, District – Beed for the offence punishable under Section 306 of the Indian Penal Code.

[2] Heard Mr. Deshmukh, learned counsel for the Applicant and Mr. Bhogale, Additional Public Prosecutor for the State of Maharashtra and Mr. Gaikwad, learned counsel for Non-Applicant No.2.

[3] According to the learned counsel for the applicant, the learned trial court has committed serious mistake in law in granting the anticipatory bail.

[4] Deceased – Prealhad as well as Non-Applciant No.2 are Advocate by profession. Prior to two years, younger brother of first informant – Shekhar died due to brain tumour. In order to give proper and adequate medical treatment to his son, deceased obtained loan from Non-Applciant No.2. It is allegations in the First Information Report that, for that mortgage deed of agricultural property was executed in favour of Non-Applciant No.2.

[5] In the year 2012, there was marriage ceremony of daughter of Non-Applciant No.2, therefore, he was demanding money from deceased – Pralhad. According to the First Information Report, deceased paid Rs.1,65,000/- to Non-Applciant No.2 however, Non-Applciant No.2 did not gave the account of the amount repaid by deceased. According to the First Information Report, certain blank cheques of deceased were in possession of Non-Applciant No.2 and accusation in the First Information Report is that Non-Applciant No.2 used to gave threat that he will file proceedings on the basis of said cheques, in the court of law. Therefore, the first informant states that his father was under tension.

[6] First Information Report further states that, on 21/07/2014 his father has committed suicide by hanging. After funeral, when police arrived at the spot, they drawn the spot panchanama. That time, they found suicide note where-in it has been stated that, he (Pralhad) is committing suicide because of Non-Applciant No.2.

[7] The learned trial court before whom the application for anticipatory bail was filed, was objected by the present applicant by filing objection. The learned court after considering the various authoritative pronouncements of the Hon'ble Apex Court, found that there is no inducement and/or any act by which it could be said that, Non-Applicant No.2 was directly involved for committing suicide by deceased. The learned trial court found that the contents of chit shows that deceased was frustrated and was under tension; as he has mortgaged the land and Non-Applicant No.2 was demanding the money, which were given to him.

[8] The learned trial court, in my view has correctly appreciated the facts and the accusation as appearing in the First Information Report has rightly reached to the conclusion that Non-Applicant No.2 has made out case for anticipatory bail, since his custodial presence was not required.

[9] From the First Information Report and from the other available material, it is clear that, *mens rea* is totally absent. At no point of time, it was intended by present Non-Applicant No.2 that deceased to commit suicide. Further nothing is to be recovered from the present Non-Applicant No.2 and, therefore, his custody is not at all required.

[10] In that view of the matter, view taken by the learned trial court is just possible of given set of facts, warranting no interference. Hence, Criminal Application is rejected.

(V.M. DESHPANDE, J.)