

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1798 OF 2015**

Ganesh Vilas Pote

..Applicant

v/s.

The State of Maharashtra.

..Respondent

Mr. Satyavrat Joshi for the applicant.
Mrs. Veera Shinde, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : NOVEMBER 26, 2015.

P.C.

. This is an application for anticipatory bail filed by the aforesaid applicant apprehending his arrest in C.R. No.363 of 2015 registered with Lonikand Police Station, District Pune, for the offences punishable under Section 306 r/w 34 of the IPC .

2. Heard Mr. Joshi, learned Counsel for the applicant, and the learned APP for the State.

3. Learned counsel for the applicant submitted that the applicant herein is a police constable attached to Lonikand police station. He submitted that the applicant herein is protected by virtue of section 45 of Cr.P.C. He has further submitted that the FIR does not

disclose essential ingredients of offence under section 306 of IPC. He further submitted that the applicant was not involved in registering the FIR. He has further submitted that perusal of remand application shows that the deceased had not made complaint of custodial torture. He submitted that the demand of money/extortion are false. Even otherwise the said allegations need to be decided on merits in the course of trial. He submitted that the deceased had criminal antecedents and apart from the present crime, several other crimes were registered against him. He further submitted that the nature of allegations levelled against the applicant do not justify custodial interrogation.

4. Learned APP has submitted that the suicide note prima facie discloses that the applicant was involved in demanding money from the deceased. She further submitted that the suicide note also reveals that the applicant had abetted commission of suicide by the deceased. She therefore submits that the applicant is not entitled for anticipatory bail.

5. I have perused the record and considered the submissions advanced by the learned counsel for the applicant and the learned APP for the State. At the outset, it may be mentioned that by

notification dated 23.5.1979 the State Government has made the provisions of Section 45(1) of Code of Criminal Procedure applicable to all the police officers as defined in Bombay Police Act. In view of the said notification the police officers as defined in the Bombay Police Act, 1951 are protected from being arrested for anything done or purported to be done in discharge of the official duties, except after obtaining the sanction of the State Government. In the present case, one of the allegations against the applicant is that he had demanded Rs.50,000/- from the deceased and had threatened to involve him in false cases if he failed to pay the said amount. This act is not done or purported to be done in discharge of the official duty. Hence prima facie, the protection under section 45 of Code of Criminal Procedure is not available.

The records prima facie reveal that Atul Ramdas Kusmude had committed suicide on 31/10/2015. Tulsa Ramdas Kusmude, the mother of the deceased lodged the FIR on 12/11/2015 alleging that the applicant and others had registered a false FIR against her son, deceased Atul. She has further stated that her son was subjected to custodial torture and even after he was released on bail he was harassed by the applicant by illegal demand of Rs.50,000/-. She further stated that the applicant had threatened to cause harm to the deceased and further threatened to involve him in false cases, if he

failed to meet his illegal demand. Pursuant to the said complaint Crime No.307 of 2015, was registered against the applicant and others for committing offences under section 363, 354, 503, 504 r/w 34 of the IPC.

6. It is important to note that the said FIR was registered by one L.S. Khose– and not by the present applicant. The records further reveal that the deceased was taken in custody and was produced before the learned Magistrate for remand. Perusal of the remand applications reveal that the deceased had stated before the learned Magistrate that he had no complaints of illtreatment. Thus there is no prima facie material to reveal that the deceased was subjected to custodial torture or illtreatment. As regards the allegation of extortion, the same will have to be decided on merits in the course of trial. At this stage the allegations made in the FIR do not prima facie justify custodial interrogation. The applicant is a police constable attached to Lonikand police station and there are no chances of the applicant absconding or thwarting the course of justice. Considering all the facts the applicant in my considered view is entitled for bail.

7. Hence, the anticipatory bail application is granted on the following terms.

i) In the event of the arrest of the applicant in Crime No.363 of 2015 registered with Lonikand Police Station, the applicant be released on furnishing bail bond of Rs.25,000/- (Rupees Twenty-five Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the learned JMFC, Shivaji Nagar, Pune.

ii) The applicant shall report to the Investigating Officer, initially for a period of 7 days from 10 a.m. to 1 p.m., and thereafter as and when required by the Investigating Officer for the purpose of interrogation.

(iii) The applicant shall not leave Pune District till filling of the charge-sheet without prior permission of JMFC, Shivaji Nagar, Pune.

(iv) Parties to act on the authenticated copy.

(ANUJA PRABHUDESSAI, J.)