

Criminal Application No. 4165 of 2016

Naseem Jamsher Tadvi,
Age : 30 years,
Occupation : Service,
R/o. 284, Patilwada,
Adgaon, Taluka : Yawal,
District : Jalgaon. .. Applicant.

The State of Maharashtra. .. Respondent.

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Mr. N.E. Deshmukh, Advocate, for the original complainant.

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DATE : 16TH SEPTEMBER 2016

The applicant / accused in Crime No. 59/2016 for offences punishable under Sections 306, 504 and 506 of the Indian Penal Code, registered with City Police Station, Bhusawal, District Jalgaon, at the instance of Rustam s/o. Nawabkhaw Tadvi, by this

application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that apart from contents of the suicide note, the other circumstance shows that the deceased was in frustrated state of mind. My attention is drawn to the order dated 19.09.2015 whereby the Ordnance Factory has terminated services of deceased Roshan Tadvī with effect from 19.09.2015. This, according to the learned Counsel, was a cause for depression. It is argued that services of Roshan Tadvī (since deceased) were continued because of pendency of Writ Petition against the Ordnance Factory.

3. The learned Addl. Public Prosecutor appearing for the respondent - State as well as the learned Counsel appearing for the informant opposed the application by contending that suicide note found on person of the deceased points out that the deceased had committed suicide only because of constant harassment and torture by the present applicant because of demand of interest on the hand loan advanced by him. It is further argued that statement of co-workers of the deceased also goes to show that there used to be constant harassing by the present applicant to the deceased on account of demand of interest amount on the hand loan. This, according to the learned Addl. Public Prosecutor as

well as the learned Counsel for the informant, amounted to instigation and abetment to Roshan Tadvī in committing suicide.

4. Perused papers of investigation including the FIR lodged by Rustam s/o. Nawabkhaw Tadvī - brother of deceased Roshan Tadvī. Deceased Roshan Tadvī had committed suicide by hanging himself in the Rest Room of the Ordnance Factory on 11.06.2016. FIR of the crime in question came to be lodged on 17.06.2016. It is averred by the informant brother that the applicant is their cousin. It is further averred that Roshan Tadvī had taken hand loan of Rs. 1,40,000/- from applicant Naseem s/o. Jamsher Tadvī for meeting expenses of marriage of their sister Mumtaj. It is further averred that by taking loan from the Credit Society of the Ordnance Factory, Roshan Tadvī had refunded the entire amount of hand loan so also interest thereon; still the deceased was used to be harassed by applicant Naseem s/o. Jamsher Tadvī on account of demand of Rs. 14,000/- towards balance amount of interest on hand loan. It is further averred that on 01.05.2016, the applicant went to the house of the informant and told the informant that Roshan Tadvī be made to refund amount of Rs. 14,000/- to him, else Roshan Tadvī will be killed. According to the prosecution case, thereafter Roshan Tadvī has committed suicide.

5. Perusal of the suicide note allegedly written by Roshan Tadvī shows that he had committed suicide because of harassment by the present applicant on account of demand of Rs. 14,000/- towards interest.

6. Abetment involves actual active complicity on the part of the abettor at the point of time prior to or at the time of commission of offence. Abetment is complete when the other is instigated to commit an act of offence. For making out offence of abetment, the prosecution is required to prove that there was instigation, provocation or incitement by the accused to the deceased for committing suicide. Some active suggestion or stimulation are required to be shown at least prima facie. Similarly, Section 107 of the IPC requires mens rea and without knowledge as well as intention, there cannot be abetment. Prima facie in the case in hand, it is not apparent that the applicant by harassing the deceased was intending the desired result of commission of suicide by the deceased. On the contrary, even if prosecution case is accepted, then also the applicant was desirous of recovering Rs. 14,000/- from the deceased Roshan Tadvī.

7. In this view of the matter, considering the nature of averments against the applicant as well as evidence available with the investigator, custodial

interrogation of the present applicant is not warranted.

8. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, in the event of his arrest, be released on bail on his executing P.R. Bond in the sum of Rs. 20,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant shall abide by the following directions :-

(i) The applicant / accused shall attend concerned Police Station on every Sunday, in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigating Officer for the purpose of investigation, till filing of charge-sheet. The applicant shall cooperate the Investigating Officer in investigation of the crime in question.

(ii) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the

facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(iii) The applicant shall not tamper with the prosecution evidence in any manner and shall cooperate the learned trial Judge in expeditious disposal of the trial, in the event of filing charge-sheet, if any, in future against him.

(iv) The applicant shall not repeat commission of similar type of offences in future.

9. The Application stands disposed of in the aforesaid terms.

10. Needless to mention that the observations contained in this order are prima facie observation which shall have no bearing on trial.

(A.M. BADAR)
JUDGE

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