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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2401 OF 2016

1. Vilas S/o Shivram Divate
2. Rupali w/o Vilas Divate ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr N.V. Gaware, Advocate h/f Mr. A.H. Mahajan, Advocate for applicants;
Mr S.D. Ghayal, Addl. Public Prosecutor for respondent/State;
Mr Yuvraj Kakade, Advocate to assist to APP

CORAM : N.W. SAMBRE, J.

DATE : 10th June, 2016

ORDER :

The applicants are seeking their release on pre-arrest bail, in connection with Crime No. I-39 of 2016, for the alleged incident dated 28th March, 2016, for which first information report was lodged on 2nd April, 2016, with Belvandi Police Station, Tq. Shrigonda, Dist. Ahmednagar, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code

2. It is claimed that the complainant Rajendra Sambhaji Tapkir and his deceased wife Swati, Doctors by profession, were in partnership with the present applicants in the business of production and sale of bottled mineral water. It is then claimed that the present applicants have played fraud on complainant and his wife. As a consequences, the financial liabilities on the complainant and his wife increased resulted into the hospital of the

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complainant and his wife was sealed by the creditor bank. It is then claimed that the applicants have defrauded complainant and his wife by selling mineral water plant to the a third person by playing fraud with the complainant and his wife. Such act on the part of the present applicants has prompted Swati, wife of complainant, to commit suicide by hanging herself. As such, crime in question.

3. While trying to make out a case for grant of pre-arrest bail, Mr Gaware, learned Counsel appearing on behalf of the applicants would submit that apart from delay of about 5 days in lodging first information report, the transaction in question, which is formed to be a basis, is a commercial transaction, for which even applicants have also suffered a huge loss.

4. Mr Gaware, then would submit that, in view of differences in parties, there are complaints and counter complaints between complainant and applicants lodged with the concerned police station. According to him, it could hardly be gathered from the contents of the first information report that it was within the knowledge of the present applicants that the incident in question would happened. He would then submit that the custodial interrogation of the applicants is not necessary as nothing is to be recovered.

5. Learned Additional Public Prosecutor opposed the application, who is assisted by the the learned Counsel appearing on behalf of the complainant, who submits that the amount from the joint account, which

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was opened in ICICI Bank, Yevati, was moved by the present applicants by defrauding the same. He would then submit that on the said act of the present applicants, the deceased lodged complaint against present applicants for the offence punishable under Section 420 of the Indian Penal Code and applicants were pressurizing the complainant and his wife to withdraw the said prosecution against them. Learned Additional Public Prosecutor would then urge that there are criminal antecedents as against the present applicants and their custodial interrogation is very much necessary for the purpose of investigation.

6. Having bestowed my thoughts to the submissions made by the respective Counsel for the parties, it is required to be noted that for making out offence under Section 306 of the Indian Penal Code, the knowledge of the present applicants qua the alleged suicide by the deceased swati was required to be established. What is brought to the notice of this Court is that there were differences between applicants and complainant and his wife in relation to financial transaction and in regard to liabilities, there are proceedings initiated against the complainant and the applicants under the Sarfaesai Act.

7. It is then required to be noted that, even if it is presumed that the applicants have pressurized the complainant and his wife for withdrawing the complaint against them for the offence punishable under Section 420 of the Indian Penal Code, there is hardly any material to infer, but for statement made by the complainant in the first information report, which is also filed belatedly without any explanation.

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8. In my opinion, having regard to the case, as is alleged in the first information report and the investigation carried out till date, the differences between parties were in relation to the financial transaction. False implications of the applicants-accused cannot be ruled out.

9. In the above background, in my opinion, it will be appropriate to enlarge the applicants on pre-arrest bail. Hence, I pass following order :

In the event of arrest of the applicants, in connection with C.R. No I-39 of 2016, registered with Belvandi Police Station, Tq. Shrigonda, Dist. Ahmednagar, for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs 25,000/- with one surety in the like amount.

The applicants shall attend the concerned police station from 17th to 19th June, 2016 between 10.00 a.m. to 12.00 noon and thereafter as and when called by the Investigating Officer for the investigation purpose.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

sjk