

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

Criminal Application No. 4118 of 2016

District : Nanded

The State of Maharashtra,
Through the Police Station,
Renapur, Dist. : Latur.

.. Applicant.
(Original complainant)

versus

1. Ishwar s/o. Girdharilal Baddar,
Age : 47 years,
Occupation : Journalist.

2. Deepa w/o. Ishwar Baddar,
Age : 40 years,
Occupation : Household.

Both R/o. Near Shivaji
High School Renapur,
Taluka : Renapur,
District : Latur.

.. Respondents
(Original applicants)

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*Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
the applicant.*

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Criminal Application No. 4339 of 2016

District : Nanded

Akash s/o. Purushottam Baddar,
Age : 25 years,
Occupation : Student,
R/o. Renapur,
Taluka : Renapur,
District : Latur.

.. Applicant.

versus

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Mr. S.B. Yawalkar, Addl. Public Prosecutor, for
respondent no.1.

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DATE : 24TH AUGUST 2016

Applicants in these applications are informant as well as the State. They are seeking quashment of the order dated 03.06.2016, passed by the learned Addl. Sessions Judge-2, Latur, thereby granting anticipatory to respondents / accused in Crime No. 103/2016, registered at Police Station, Renapur, District Latur, for the offence punishable

under Section 306 read with Section 34 of the Indian Penal Code, at the instance of applicant Akash s/o. Purushottam Baddar.

2. Heard the learned Addl. Public Prosecutor as well as the learned Counsel for the applicant / informant. They unanimously argued that because of constant harassment and torture by respondents - Ishwar and his wife Deepa, deceased Sunita Purushottam Baddar committed suicide by hanging herself on 18.04.2016. The learned Counsel for applicant Akash / informant, has drawn my attention to the complaint dated 30.04.2016 lodged by him with Police Inspector, Police Station, Renapur, to point out that his deceased mother died suicidal death and respondents had abetted commission of suicide by her. The learned Addl. Public Prosecutor also argued that acts of respondents reflected from papers of investigation do show instigation to deceased Sunita to commit suicide.

3. Perused papers of investigation submitted by the learned Addl. Public Prosecutor, including the suicide note written by Sunita and statements of witnesses. Respondents / accused are uncle and aunt of informant Akash. His mother Sunita died suicidal death on 18.04.2016, as seen from papers of investigation. A suicide note written by deceased Sunita came to be seized during investigation. The

crime in question is registered on the basis of FIR lodged by her son Akash. Perusal of the FIR lodged by Akash shows that accused Ishwar and Deepa are his uncle and aunt. They reside in the neighbourhood of informant Akash. Akash averred that over the issue of sweeping, accused Ishwar and his wife Deepa were quarreling with his family including his mother Sunita. Informant Akash further averred that their relatives namely Anil Sharma and Santosh Upadhye had intervened in the quarrel and convinced Ishwar and Deepa not to quarrel with the family members of informant Akash. However, they did not mend their ways and continued quarreling with Sunita. Informant Akash further averred that on 18.04.2016, her mother Sunita committed suicide by hanging herself and a note written by her is found. Perusal of suicide note written by Sunita reflects following acts committed by accused persons :-

(a) Accused Ishwar and Deepa were showing supremacy over her.

(b) They were not allowing Sunita to talk with others in the land.

(c) They were saying to her that persons residing in the lane are not good and they are indulging in black magic. However, Ishwar and Deepa are talking with neighbours

(d) Ishwar and Deepa are harassing Sunita. Since last four years, she is not visiting anybody in the lane and not talking much with anybody. Ishwar and Deepa are harassing her.

These are the contents of the dying declaration of deceased Sunita which can be culled out from the note allegedly written by her.

4. Now, let us examine whether prima facie case for abetment to commit suicide can be reflected from the said averment. It is well settled that '*abetment*' does not involve actual commission of crime but it is crime apart. Abetment involves actual active complicity on the part of the abettor at the point prior to or at the time of commission of offence. Abetment is complete when other is instigated to commit an act of offence. In order to make out the offence of abetment, prosecution is required to indicate some active stimulation by the accused to the deceased to indulge in the act of self-effacement. Section 107 of the Indian Penal Code requires mens rea and without knowledge and intention, there cannot be abetment. As such, knowledge and intention must relate to the crime. Viewed from this angle, prima facie, it is not seen that suicide by Sunita is a common course of event and natural conduct of normal human being.

5. Be that as it may, perusal of the impugned order shows that it is a well reasoned order wherein the learned Addl. Sessions Judge has recorded a finding that suicide note of Sunita is already seized and statement of witnesses are already recorded. In this view of the matter, the learned Addl. Sessions Judge observed that custodial interrogation of applicants is not necessary. No perversity or illegality can be found with such finding. It may be said that because Sunita was having grudge or even honestly feeling that she was wrong by accused persons, she might have committed suicide. The question would be, whether that amounts to abetment and whether accused persons were having knowledge that with such conduct, she would be driven to commit suicide, is a matter which will be answered in the trial by the accused persons.

6. Taking overall view of the matter, I see no reason to interfere with the impugned order of the learned Addl. Sessions Judge, granting anticipatory bail to respondents / accused.

7. Both Applications are accordingly rejected.

(A.M. BADAR)
JUDGE

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