

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

**Criminal Application No. 5282 of 2016**

District : Dhule

Aasha Shankar Kadam @  
Aasha Dinesh Bagle,  
Age : 40 years,  
Occupation : Housewife,  
R/o. Hemant Nagar,  
Kaij Choufuli,  
Nandurbar,  
Taluka & Dist. Nandurbar. .. Applicant.

**versus**

1. The State of Maharashtra,  
Through Police Station Officer,  
Deopur Police Station, Deopur,  
Taluka & District : Dhule.
2. Superintendent of Police,  
Dhule,  
Taluka & District : Dhule. .. Respondents.

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*Mr. Shailesh P. Brahme, Advocate, for the applicant.*

*Mr. S.P. Sonpawale, Addl. Public Prosecutor, for  
respondent nos.1 and 2.*

*Mr. Yogesh B. Bolkar, Advocate, for the original  
complainant.*

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**CORAM : A.M. BADAR, J.**

**DATE : 3RD OCTOBER 2016**

**ORAL ORDER:**

The applicant / accused in Crime No. 85/2016 registered with Police Station, Deopur, District Dhule, for offences punishable under Sections 306, 504, 506, read with Section 34 of the Indian Penal Code, at the instance of Ashwini w/o. Yogesh Desle, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that perusal of the FIR does not satisfy the ingredients of offence of abetment and therefore, the applicant is entitled for pre-arrest bail. He pointed out that the main accused is already arrested and has been released on bail.

3. The learned Addl. Public Prosecutor opposed the application by pointing out the inquest Panchanama and submitted that a suicide note was recovered from the dead body. The learned Addl. Public Prosecutor argued that the suicide note gives details of the incident including dates. He also pointed out statement of relatives of the deceased to show that the deceased was under tension. The learned Addl. Public Prosecutor submitted that substantial amount was paid by the deceased to the present applicant as well as her husband for transfer of plot of land but the plot was not transferred nor

the amount was refunded. On the contrary, the deceased was harassed and threatened by the present applicant as well as co-accused.

4. The learned Counsel appearing for the informant reiterated the same arguments and further argued that after registration of the crime in question, the present applicant had indulged in assailing and threatening the informant thereby tampering the evidence of prosecution and as such, no case for pre-arrest bail is made out.

5. Perused papers of investigation including the suicide note allegedly found on the dead body. According to the prosecution case, Yogesh Desle was in the profession of construction and he paid an amount of Rs. 18,00,000/- to the present applicant and her husband as a consideration for purchase of plot. Only an amount of Rs. 1,60,000/- was outstanding. However, according to the informant, on 23.08.2016, her husband was called by accused persons on the site and at that time, Yogesh Desle was threatened and and abused by declaring that the amount will not be refunded to him and he may do whatever he wants. According to the prosecution case, ultimately Yogesh Desle committed suicide by hanging on 24.08.2016.

6. Perusal of alleged suicide note shows that

according to the declarant, he paid Rs. 15,00,000/- and Rs. 3,00,000/- to accused persons for purchasing a plot. An amount of Rs. 1,60,000/- was remained to be paid. However, on 28.08.2016, according to this dying declaration, he was called at site with an assurance that accused persons are bringing documents of title. There, according to the declarant, accused persons told him that they are not transferring the plot and they will not refund the amount paid by the deceased declarant to them. The suicide note further shows that fade up with this harassment by accused persons, he is committing suicide.

7. In order to prove the offence of abetment, the prosecution is required to point out prima facie material to show that there was instigation, provocation, incitement or encouragement by the accused to the deceased to commit suicide. Some active suggestion, some stimulation or intimidation is required to be shown. It is well settled that Section 107 of the IPC requires *mens rea* and without knowledge and intention there cannot be abetment. Such knowledge and intention must relate to the crime. In the case in hand, cause shown in the dying declaration is to the effect that accused persons have refused to refund the amount or transfer the plot to the deceased. Prima facie suicide on such count does not appear to be common course of event and natural result of normal human conduct.

8. In this view of the matter, custodial interrogation of the present applicant is not warranted.

9. 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 her executing P.R. Bond in the sum of Rs. 15,000/- 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 directives :-

(i) The applicant shall attend the concerned Police Station on 8th October 2016 and 12th October 2016 in between 11.00 a.m. and 01.00 p.m. and she should cooperate the investigator.

(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.

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

( A.M. BADAR )  
JUDGE

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