

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 661 OF 2016

Rahul Raj Singh	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. A.H.H. Ponda a/w. Mr. Vikas K.S. Goar a/w. Ms. Sneha Singh a/w. Mr. Sushil Upadhyay, Advocate for the applicant.
 Mr. Nilesh Pawaskar, Spl. P.P. a/w. Ms. U.V. Kejriwal, APP for the State.
 Mr. Datta Mane, Advocate for the complainant.
 Mr. Deepak Phatangare, I.O., Bangurnagar Police Station present.
 Mrs. Shobha Banerjee, complainant present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
 DATE: **25th April, 2016.**

P.C.:

Today at the time of hearing Anticipatory Bail Application, the learned Special Public Prosecutor submitted that the police have prepared DVD of the recorded conversation between the deceased and the applicant/accused which has taken place at around 3.40 to 3.45 p.m. on 1st April, 2016, just before the death of the deceased. The cell phone was sent to the Forensic Science Laboratory and the last call conversation is deciphered and is made available. DVD is sealed and produced before the Court. It was opened in the presence of the prosecutor and Investigating Officer in the chamber in recess and it was heard in their presence. Thereafter the DVD was resealed and handed over to the Investigating officer.

2. This Application is moved for pre-arrest bail, as the

applicant/accused is facing charges under sections 306, 323, 506(1), 504 of Indian Penal Code in C.R. No. 110 of 2016 registered with Bangurnagar Police Station, Mumbai. The offence is registered at the instance of Mrs. Shobha Shankar Banerjee, mother of deceased on 5th April, 2016.

3. It is the case of the prosecution that Pratyusha Banerjee, the deceased was an actress on a small screen. The applicant/accused is also an actor. The deceased got acquainted with the applicant/accused in June, 2015. thereafter the applicant/accused left his house and started residing with the deceased in the house which was taken on rent by her parents. The complainant and her husband, i.e. parents of deceased were staying together along with the applicant/accused and the deceased till 12th January, 2016. However, during that period, the behaviour of the applicant/accused was cruel, as he used to quarrel with the deceased and assault her. They had disputes. According to the complainant, the applicant/accused used to demand money from the deceased. In January, the complainant left Mumbai and went to Jharkhand. It is the case of the prosecution that the deceased was harassed so much by the applicant/accused that she wanted to finish her life and accordingly she expressed this to her aunt. The deceased also informed their family friend that the applicant/accused used to torture her. Thereafter she received phone on 1st April, 2016 from her family friend that her daughter tried to

commit suicide and so she was admitted in the hospital. Thereafter the applicant/accused informed that the deceased has committed suicide. On 5th April, 2016, the mother of deceased lodged complaint. Hence this Application for pre-arrest bail.

4. The learned counsel for the applicant/accused has submitted that the applicant and deceased were residing together. In the month of January, the deceased and applicant/accused both have left the rented accommodation of the parents of the deceased and started residing in the premises which are taken on rent by the applicant/accused. He submitted that the applicant/accused and deceased were in love with each other. The applicant/accused did not want her to commit suicide. They had spent happy time few days prior to her death. It is further submitted that on the night intervening 31st March, 2016 to 1st April, 2016, the applicant/accused, deceased and their one friend spent the whole night together till 8.30 a.m. Thereafter the friend left and applicant/accused slept. When he woke up in the morning, he found that the deceased continuously was drinking. Thereafter he objected to it but she continued to drink. He left home at around 3.30 p.m.. Thereafter he informed the deceased on phone that he went to bring food and the last call was made by the deceased to applicant/accused where he told her that he would be coming back immediately and when he returned, she had committed

suicide. The learned counsel submitted this is not a case falling under section 306 of the Indian Penal Code , as the basic ingredients of abetment of suicide are not made out. In support of his submissions, he relied on the following judgments:

- (i) Mahendra Singh and Anr. vs. State of M.P, reported in 1996 Cri. L.J. 894.
- (ii) Bhagwan Das vs. Kartar Singh & Ors., reported in 2007 Cri. L.J. 3420.
- (iii) Gangula Mohan Reddy vs. State of Maharashtra, reported in 2010 ALL MR (Cri) 615 (S.C.).
- (iv) Sanju alias Sanjay Singh Sengar vs. State of Madhya Pradesh, reported in AIR 2002 SC 1998.

The learned counsel submitted that his application for pre-arrest bail be allowed.

5. The learned Special Public Prosecutor while opposing the anticipatory bail application has relied on the statements of number of witnesses. He submitted that the applicant/accused used to assault her. Before committed suicide, the deceased and applicant were together till 3.30 p.m. Then he left and came back after an hour, i.e., at 4.30 p.m. The door was not opened, so he contacted his ex-girl friend and got the number of keymaker and contacted the keymaker. Thereafter he remembered that

from rear side through balcony entry is possible from neighbours house. After entry, they found deceased hanged. He submitted that the police have doubt about the role played by the applicant/accused in this offence. Though the police have applied section 306, the police are suspicious that there is a foul play and they want to invoke section 302 of the Indian Penal Code. It is further argued that they want to clear their suspicion and therefore, the custody of the applicant/accused for interrogation and effective investigation is required. He submitted that at the time of spot panchnama, the police did not find any stool or any support where the body of deceased was hanging. Learned Spl. PP further submitted that in the spot panchnama, police have come across some discrepancies, i.e., part of dupatta which was cut by the applicant/accused was not hanging to the fan but it was found on the bed, so the police want to find out who has untied that portion of the dupatta. The police have come across the falsity of the whereabouts of the accused earlier night. The story of the applicant/accused that deceased was burdened with heavy loans is not correct and it is falsified in the investigation. The learned Spl. PP further submitted that police have found that prior to the death of deceased, she has undergone abortion and police wants to find out whether the abortion was forcible or not and if at all they found that abortion was forcible, they will invoke section 313. He relied on the conversation on the cell phone between these two persons which had taken place just before the incident.

He submitted that this is a fit case under section 306, as the applicant/accused had tortured the deceased so much that she had no option but to commit suicide. Learned Spl. PP. relied on sub-section 3 of Section 107 of the Indian Penal Code, as he submitted that by act of harassment, the applicant/accused has intentionally aided and there is also illegal omission on his part. He submitted that custodial interrogation of the applicant/accused is necessary. In order to substantiate his submissions on the point of requirement of custodial interrogation, he relied on the following cases:

- (i) Hyderali vs. State of Kerala in Bail Application No.4274 of 2008 decided on 5th August, 2008.
- (ii) Pramod s/o. Madhukar Kalpund vs. Savita w/o. Rajendra Kalpund & Another decided on 2nd February, 2015.

He submitted that the police want to find out whether the applicant/accused is drug addict or drug peddler.

6. The submissions of learned Spl. PP. that the police are suspicious about the role played by the applicant/accused in the death of deceased and therefore they did not invoke section 302 cannot be appreciated at this stage. If the police come across the well founded suspicion then nobody has prevented the police to invoke section 302 which they have not done.

7. Perused the FIR, the statements of the witnesses which are relied by

the learned Special Public Prosecutor so also last telephonic conversation between the applicant/accused and deceased which has taken place at around 3.43 p.m. The postmortem notes disclose ligature mark over the neck and cause of death was asphyxia. From the statements of the witnesses, it can be gathered that the deceased had grievance against the applicant/accused. There were continuous quarrels between the deceased and the applicant/accused. The applicant/accused used to demand money occasionally from the deceased and sometimes used to assault her. The police have invoked sections 306, 323, 506(1), 504 of the Indian Penal Code. The non-bailable section is only 306 of the Indian Penal code.

8. To constitute the offence under section 306, it is necessary for the Court even at the stage of anticipatory bail to find out whether prima facie case of abetment as per the ingredients of section 107 of Indian Penal Code is made out or not. There should be instigation or conspiracy or a person should intentionally aid that the deceased should commit suicide. It is necessary to show whether the accused was having mens rea that he wanted deceased to commit suicide. Harassment, suspicion, disputes, quarrels, jealousy, vengeance, ego can be the reasons to commit suicide. However, to constitute the offence under section 306 what is required is an abetment. There should be such an act or illegal omission to show that a person has instigated or he provoked or incited or encouraged to do the act

of suicide. Mental element plays significant role in criminal law. Under Explanation 2, the person does something in order to facilitate commission of that act is an abettor. To facilitate commission of that act means to make it easier or to help. How a person will react to a situation is unpredictable. Sensitivity differs from person to person, does the reaction. Every suicide has cause but all the causes cannot be labelled as abetment. Therefore, while assessing abetment, the Judge has to take the objective view guided by section 107 of the Indian Penal Code. The harassment or torture should be of such a degree that it really left no option and drove a person to commit suicide. An individual may carry suicidal traits, or may be very emotional or may be very egoist or be jealous or vindictive. Such emotions may overpower the individual leading him to take drastic step to kill himself or herself. Under such circumstances, unless the *mensrea* is brought on record, *prima facie* it cannot be said that it is an abetment.

9. The learned Spl. PP. has produced the audio clip of the lat phone call. No transcription was given. So as per the request made by the learned Spl. PP., the audio clip was heard between the deceased and applicant/accused of the conversation which has taken place few minutes prior to her death. Both of them expressed that they love each other, however, the deceased mentioned that she is committing suicide because her parents were given threats that they would be killed and she said that

she was called characterless though she was not. She mentioned about his ego. However, throughout the conversation, the applicant/accused was trying to stop her, telling her to wait for him and he was telling her continuously not to take any drastic steps and was coming back to her and he returned at 4.30 p.m. Suicide note is not found. After hearing the conversation, it does not appear that she was drunk. Her voice was clear but there was continuous accusation on the accused. But both of them were telling that they love each other and he wanted her not to stop her collapsing. The applicant/accused and deceased were staying together in live-in relationship. It is a short relationship of 8 to 9 months. The evidence of abortion of Pratyusha or consumption of drug by applicant/accused cannot be treated as ground for abetment. These are altogether different facts or instances. The social status of both the persons is to be taken into account. The deceased was an actress of T.V. Serials and applicant/accused was in film industry. It cannot be prima facie said that deceased was compelled to stay with applicant/accused. Rather she opted to go for live-in relationship where the option to quit the relationship is always open. It appears from the statement that the applicant/accused prima facie has committed offence of assault, abusing and threatening the deceased, however, those sections are bailable and the evidence can be tested at the time of trial. There is no prima facie material before the Court to deny him pre-arrest bail under section 306 of the Indian Penal Code.

10. The learned Spl. PP. relied on the case of **Pramod s/o. Madhukar Kalpund vs. Savita w/o. Rajendra Kalpund & Anr. decided on 2nd February, 2015.** The learned Single Judge of Aurangabad Bench of Bombay High Court has held that in the suicide note, the deceased had mentioned that the respondent is responsible for his suicide. The learned Judge has held that to grant anticipatory bail to a person who has no regard to moral values, amounts to passing of an order against larger interest of public. In the said case, the respondent had illicit relations with the wife of the deceased and when the deceased questioned his wife, she admitted the same. It is to be noted that in the present case, the applicant/accused and deceased were not married but they were in live-in relationship. So, there was no such compelling circumstances like social pressure and/or fear and therefore, prima facie it cannot be said that no option was left open for the deceased to commit suicide.

11. In the case of **Gangula Mohan Reddy vs. State of Andhra Pradesh** (supra), the Supreme Court has referred the case of **Ramesh Kumar vs. State of Chattisgarh** and in the said case, there was a dispute between the husband and wife wherein the husband said to his wife that “you are free to do whatever you wish and go wherever you like”. Thereafter the wife committed suicide. The Supreme Court held that “it is not a case where the accused had by his acts or omission or by a continued course of

conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

12. In the case of **Hyderali** (*supra*) there was no offence under section 306 but there was offence of forgery and cheating and the learned Single Judge of Kerala High Court has stated about the need of custodial interrogation.

13. In the case of **Sanju alias Sanjay Singh Sengar** (*supra*), the Hon'ble Supreme Court has held that accused using abusive language and telling the deceased go and die itself cannot be an instigation.

14. In the case of **Bhagwan Das** (*supra*), the Hon'ble Supreme Court held that the wife committed suicide due to harassment at the hands of husband and in-laws due to differences, however, it does not attract section 306 read with section 107 of IPC.

15. Considering the facts of the present case and prima facie evidence, the ratio laid down by the Hon'ble Supreme Court interpreting section 107 of Indian Penal Code in various judgments is applicable to the present case.

16. The prosecution did not bring any evidence that the applicant has criminal antecedents. He is not likely to flee. Thus, considering this, prima facie I am of the view that it is a case where police can investigate without any custodial interrogation. So also considering the parameters laid down under section 438 of Cr. P.C. in **Siddharam Satlingappa Mhetre vs. State of Maharashtra & Ors., reported in (2011) 1 SCC 694**, I am of the view that protection under section 438 can be given. I confirm the interim pre-arrest bail granted to the applicant/accused by this Court on 12th April, 2016. Applicant/accused is directed to attend police station of every Monday, Thursday and Saturday between 11 a.m. to 2 p.m. for 2 weeks and thereafter as and when called.

(MRIDULA BHATKAR, J.)