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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.812 OF 2016

Shivram Patil and ors	 Applicants
V/s.	
The State of Maharashtra	 Respondent

Mr. S.R. Phanse, for the Applicant.
Mr. Y. M. Nakhwa, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 27th JUNE, 2016.

P.C. :

1. The applicants/accused, in crime No.I-79 of 2016 registered at Kamothe Police Station, for offence punishable under Section 306 read with 34 of Indian Penal Code, at the instance of Bhalchandra Dere, are praying for pre-arrest bail.
2. Heard the learned counsel for the applicants. He relying on the order of this court in Anticipatory Bail Application No.661 of 2016 in Raviraj Ramchandra Deshpande -vs- State of Maharashtra, argued that harassment or torture to the deceased must be of such degree so as to leave him no alternative than to end his life. Learned counsel for applicant submits that in the instant case element of mensrea is missing and as

such liberty of applicant needs to be protected.

3. As against this the learned APP argued that statement of watchman coupled with suicide note would show that the applicants abetted commission of suicide by the deceased.

4. Perused the papers of investigation. On 7.4.2016, the informant Bhalchandra Dere reported the police that his brother Sampat Dere committed suicide by hanging himself to ceiling fan in the room of his house. He alleged that in view of suicide note found on the spot, applicants are responsible for commission of suicide by his brother Sampat Dere.

5. The perusal of suicide note shows that deceased Sampat has written cause of his death for commission of suicide because of acts on the part of applicants/accused. According to deceased Sampat, applicants came to his house and assaulted him without there being any reason and threatened to kill him. The deceased has further written in note that because of this act on the part of accused persons, he became frightened and has committed suicide.

6. During the investigation, the Investigating officer has recorded statement of watchman of building, where flat of deceased is situated. He has stated to police that on 5.4.2016 at about 4.30 p.m. four persons came in the society and asked him as to where Sampat Dere (since

deceased) resides.

7. This is what the material against the present applicants found in the case diary. The postmortem report prima facie shows that Sampat died because of asphyxia due to hanging. The deceased has stated in his suicide note that the applicants/accused came to his house and assaulted him without any cause. Paragraph 17 of the postmortem report which deals with surface wounds and injuries does not show any sign of assault or injuries which can be attributable to present applicant. Except legature mark, no other injury was found on the person of the deceased.

8. Abetment does not involve actual commission of crime, but it is crime apart. Some active suggestion or stimulation by abettors are required to be shown in order to drive the deceased to commit suicide in a change for abatement. In the instant case in hand, no external injuries could be found on the person of deceased. Then the only averment remains is that of threatening to kill the deceased. Nothing is seen from the papers of investigation that in past the deceased was subjected to threats to his life by applicants.

9. In the result liberty of applicants, gets precedence over

interest of investigator in their custodial interrogation. As such application is allowed.

Order

- I) In the event of arrest of applicants, in above crime, they be released on bail on their executing P.R. Bonds in the sum of Rs.10,000/- by each of them and on their furnishing sureties in the like amounts.
- II) The applicants 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 applicants shall attend the concerned police station on every Sunday in between 11.00 a.m. to 1.00 p.m., till filing of the chargesheet and shall co-operate the Investigating officer.
- IV) The applicants shall not tamper with the prosecution evidence in any manner.

[A. M. BADAR, J.]