

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**ANTICIPATORY BAIL APPLICATION NO.1191 OF 2016**  
Avinash s/o Bhaskar Tayde ... .. Applicant  
vs  
The State of Maharashtra .. Respondent

with  
**ANTICIPATORY BAIL APPLICATION NO.1296 OF 2016**  
Swati Swapnil Patole .. Applicant  
vs  
The State of Maharashtra .. Respondent

Mr.Sahil M.Bhangde for Applicant in ABA No.1191/2016  
Ms.Rucheeta R.Dhuru a/w Ms Amruta Athavale in  
ABA No.1296/2016

Mr.Arfan Sait Additional Public Prosecutor for State  
Mr.S.T.Jadhav API Panvel city police station present  
**CORAM: A.M.BADAR, J**  
**DATE: 1ST AUGUST, 2016**  
**P.C.**

1. Applicant/accused in crime No.I.241 of 2016 for offences punishable under section 306, 420 read with section 34 of the Indian Penal Code registered at Police station Panvel city Navi Mumbai at the instance of Padma wd/o Suresh Patole by these applications are seeking pre-arrest bail.

2. Heard learned counsel appearing for the Applicants.  
The learned counsel for the Applicant-Swati has argued that her

husband (since deceased) was to get a job at Dubai. Swati left her matrimonial house and started staying at Badlapur. By taking me through the FIR, learned counsel for Applicant-Swati argued that Swati is not connected with the crime in question. There was no correspondence and no divorce petition was filed and as such it cannot be said that Swati had abetted the commission of suicide. By taking me through the entire FIR learned counsel argued that the informant was having strained relations with her relatives including sister of Applicant-Swati. It is argued that so-called transcript of telephonic conversation between Swati and co-accused Manoj is of the year 2014 and as such is not having nexus with the alleged act. The learned counsel argued that the informant was residing separately for last two years and therefore, element of provocation is missing. The act of commission of suicide by Swapnil is because of cheating by the co-accused on the pretext of sending him to Dubai.

3. Learned counsel for Applicant-Avinash @ Manoj argued that the said Applicant is a relative of deceased Swapnil and the averments in the prosecution case are stale and not pointing out any nexus or *mens rea*. Learned counsel argued that the Applicant resides at Wardha and on the date of the alleged incident, there was

not even a person at Panvel where the incident happened. The learned counsel further argued that section 107 of the Indian Penal Code was interpreted by a catena of judgments and even if the case of the prosecution is accepted, then also it cannot be said that the Applicant had instigated deceased Swapnil to commit suicide. My attention is drawn to paragraph 13, 14 and 18 of the judgment in the matter of **STATE OF KERALA & ors VS.S.UNNIKRISHNAN NAIR & ORS** reported in (2015) (9) Supreme Court Cases 639 to point out that for making out the offence of abetment, it is required to be shown that the accused has played any role in conspiracy which ultimately resulted in instigating the deceased to commit suicide. The learned counsel argued that without positive act on the part of the accused to instigate or aid in committing suicide no offence punishable under section 306 of the Indian penal code can be made out. Psychology of a person committing suicide is pointed out by the learned counsel by drawing my attention to para 18 of the said judgment and he argued that it is apparent that the deceased had committed suicide because of the fact that he has been cheated by the co-accused by an amount of Rs.3,00,000/- for sending him to Dubai. The learned counsel placed reliance on the observations in para 8 and 16 of the order of this Court in the matter of **Anticipatory**

**Bail Application No.661 of 2016** in the matter of **Rahul Raj Singh vs State of Maharashtra, decided on 25 April 2016**. It is argued that in the case in hand there is no instigation or conspiracy which resulted in intentionally aiding Swapnil to commit suicide. It is further argued that harassment of Swapnil and quarrels can be a reason to commit suicide but by that offence punishable under section 306 of the Indian Penal Code is not made out.

4. To buttress the same contention, reliance is placed on **MANOHAR LAXMAN GOVANDHA VS THE STATE OF MAHARASHTRA** reported in 2012 ALL MR (Cri) 68 and **Dr.MRS SEEMA AJAY BHOOREDDY VS. THE STATE OF MAHARASHTRA** reported in 2011 ALL MR (Cri) 3326.

5. I have also heard learned APP appearing for the State. The learned APP argued that the deceased was having a cell phone which was earlier used by his wife i.e. applicant/accused-Swati. According to the learned APP, the deceased had downloaded an Application by which conversation from that cell phone used to be automatically recorded. By pointing out the transcript of the said conversation the learned APP argued that the intention as well as

knowledge of Applicant-Swati and Applicant-Avinash can be gathered therefrom. The learned APP pointed out the statement of Trupti Patole and argued that even this transcript was played in a meeting attended by both Applicants in order to resolve the controversy but, still both of them did not mend their ways. The learned APP argued that the deceased had on 12 July 2014 reported acts of both Applicants to the Assistant Commissioner of Police as well as to the Senior Police Inspector and the said complaint letter would reflect the ingredients of section 107 of Indian Penal Code making both Applicants *prima facie* liable for the offence of commission of suicide by the deceased Swapnil. My attention is also drawn to the statement of two witnesses who are friends of the deceased. The learned APP by relying on the papers of investigation argued that in the wake of such evidence connecting both the Applicants to the crime in question, it cannot be said that no case of abetment is made out against both the Applicants thereby entitling them for pre-arrest bail.

6. Both Applicants are charged for the offence punishable under section 306 of the Indian penal code with the averment that they have abetted deceased Swapnil Patole to commit suicide and

accordingly Swapnil died suicidal death in the night intervening 24 June 2016 and 25 June 2016 by hanging himself by a rope at the house of his mother/informant Padma Patole at Panvel. At the outset, it is apposite to quote section 107 of the Indian Penal Code which defines the offence of abetment. It reads thus :

“107. Abetment of a thing: A person abets the doing of a thing who-

First- Instigates any person to do that thing or

Secondly: Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to doing of that thing or

Thirdly: Intentionally aids, by any act or illegal omission, the doing of that thing

**Explanation:** 1. A person who by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose voluntarily causes or procures or attempts to cause or procure a thing to be done is said to instigate the doing of that thing.”

7. A bare perusal of this section goes to show that instigating a person to do a thing or intentionally aiding a person to commit an act or illegal commission amounts to abetment. Similarly if an accused engages himself with other accused persons in any conspiracy for doing that thing and if an act or illegal omission takes place in pursuance of such conspiracy then also it can be said that

such a person has abetted doing of such thing.

8. In the case in hand, Applicant-Swati Patole is wife of deceased-Swapnil Patole. Applicant-Avinash @ Manoj Tayde is uncle of the deceased. Informant Padma Patole lodged a report against both the Applicants as well as co-accused on 25 June 2016 with an averment that Applicant-Swati married her son Swapnil in July 2016 and thereafter the couple started residing in a flat owned by her in Mantri complex, Dopodi, Pune. Applicant-Avinash @ Manoj along with his wife Sulbha was also residing in the same housing complex but in a different wing of the building. According to the informant, Applicant-Swati used to stay at the flat of Applicant Avinash @ Manoj throughout the day. Sulbha wife of Avinash @ Manoj used to go out for work. The informant further averred that intimacy between both applicants came to the notice of Sulbha as well as the informant. Deceased Swapnil-husband of Applicant-Swati, also came to know about this relationship and then quarrel between the couple started. Informant-Padma Patole averred that despite their efforts both Applicants were not mending their ways. It is also reported that Applicant-Swati had lodged a report against Swapnil (since deceased) with police station Bhosari. It is reported by the informant

that during the course of quarrel Swapnil asked his wife Swati to sever ties with Applicant-Avinash @ Manoj. Swati retorted by saying that she will continue her relations and Swapnil may do whatever he wants. With such an averment, the informant pointed out accusing finger against both Applicants. The FIR also contains averments of the offence punishable under section 420 against co-accused. The contention is to the effect that co-accused had extracted an amount of Rs.3,00,000/- on the pretext of providing job to Swapnil at Dubai. However, those are not relevant for the purpose of deciding the instant application.

9. The learned counsel for the Applicant-Avinash @ Manoj has rightly relied on the judgment in the matter of **S.UNNIKRISHNAN NAIR** and ors (supra) wherein by relying on several judgments, the Hon'ble Supreme Court has held that for making out an offence of abetment the role of accused in conspiracy which ultimately resulted in instigation in committing suicide by the deceased is required to be established. It is also averred that without positive act on the part of accused persons to instigate or aid in committing suicide, the offence punishable under section 306 of the Indian penal code cannot be made out. In the matter of **Rahul Singh**



this Court has observed that in order to make out the offence of abetment, there should be instigation or accused should intentionally aid the deceased to commit suicide . It is further observed that every suicide has a cause but all causes cannot be labelled as 'abetment.' It is further observed that harassment or torture should be of such a degree that it really leaves no option with the deceased but to commit the crime. In other words, an abetment does not involve actual commission of crime but it is a crime apart. For making out the offence of abetment, an active complicity on the part of the abettors at a point of time prior to or at the time of commission of offence, is required to be established. The prosecution is required to prove that there was an instigation, stimulation, provocation or incitement by accused persons to the deceased to commit the crime. Section 107 of the Indian Penal Code requires *mens rea* and without the knowledge and intention there cannot be abetment. It will have to be seen in the instant case as to whether suicide by Swapnil is a natural result of a normal human conduct. Keeping in mind these aspects let us *prima facie* examine whether the material on record is depicting the intention and knowledge on the part of Applicants that Swapnil shall commit suicide.

10. During investigation, the Investigator has seized the cell phone which contained the recorded conversation between both Applicants viz. Swati and Avinash @ Manoj. Perusal of the transcript of that telephonic conversation reveals that on an earlier occasion Applicant-Swati had lodged some complaint against the deceased with police. The transcript of the telephonic conversation contained the details of sexual activities of both Applicants. The transcript also shows that both the Applicants were aware that husband of Swati was aware about their physical intimacy. The telephonic conversation refers that changes in Swati are being noted by deceased Swapnil. The telephonic conversation further reflects that Applicant-Swati was earlier having illicit relations with a young boy from Badlapur and applicant-Avinash @ Manoj was in an agitated state of mind because of that affair of Applicant-Swati. The telephonic conversation as seen from the transcript thereof also reveals that despite opposition by deceased Swapnil his wife Applicant-Swati used to roam with Applicant-Avinash @ Manoj during late night hours upto 1.30 a.m. To crown this all, Applicant-Avinash @ Manoj was suggesting Swati to quarrel with deceased Swapnil and his relatives and lodge a police complaint so as to bring them in trouble. He was also suggesting Applicant-Swati to obtain signature on a blank stamp paper so as to

make out a will transferring the property of the family in favour of her children. It appears that both applicants were planning that the Applicant-Swati should not divorce Swapnil. It is seen that both Applicants were aware that the deceased Swapnil was knowing their physical intimacy and despite his resistance, they continued to indulge in extra-marital affair. Record of investigation reveals that a meeting was arranged in order to resolve the controversy and the same was attended by both Applicants. In that meeting, their telephonic conversation was replayed. Both Applicants were then requested not to continue such liason any further. Statements of witnesses goes to show that the affair between both Applicants continued even thereafter also. It is seen from the record of investigation, that deceased Swapnil has disclosed about the telephonic conversation between both the Applicants to his friends included Jay Patil and Javed Abbas.

11. Record of investigation further reveals that in the month of July 2014 deceased-Swapnil has taken recourse to the provisions of law by reporting the matter to the Assistant Commissioner of Police as well as the Senior Police Inspector. Woes of the deceased can be reflected from this complaint application.

Perusal of this complaint application of deceased-Swapnil shows the mode and manner in which he was treated by both applicants. This complaint application of deceased Swapnil shows that there used to be about 26 calls daily between both applicants. After dinner, despite protest by Swapnil Applicant-Swati used to join the company of Applicant-Avinash @ Manoj for taking a round in late night hours and that they were having sex during this period is reflected in the transcript of telephonic conversation between them. This conversation was also heard by Swapnil. The complaint application of deceased Swapnil also shows that whenever he used to protest or oppose Swati in joining the company of Avinash @ Manoj, she used to smash her head and used to pour kerosene on her person and then she used to threaten Swapnil that she will lodge a report with police against him. Harassed and cornered state of mind of Swapnil is reflected in this letter. It is seen that despite of this, deceased Swapnil used to take efforts to resume his matrimonial relations with Applicant-Swati but, both applicants were continuing their illicit relations to the knowledge of deceased Swapnil. Record of investigation reveals the fact that deceased husband Swapnil was aware of amorous and lustful relations between his uncle and his wife. They both were also knowing this fact. Therefore, it cannot be

said that both Applicants were not having any intention or *mens rea* in order to drive Swapnil to commit crime. *Prima facie* it is seen that both applicants were knowing the consequence of their act which was continued for years together with the knowledge of deceased Swapnil and ultimately Swapnil indulged in self-  
efficacement. The offence alleged is heinous as well as serious and there is prima facie evidence to connect both the Applicants to the crime in question.

12. In the light of such evidence, no case for anticipatory bail is made out. Hence the following order :

13. Both applications are rejected.

**(A.M.BADAR,J)**