

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1205 OF 2016**

Rajendrakumar Tehmalbhai Shah .. Applicant
vs
The State of Maharashtra .. Respondent

Mr.Kuldeep Patil I/b Ms.Sneha Sanap for Applicant
Mr.S.S.Pednekar Additional Public Prosecutor for State

CORAM: A.M.BADAR, J
DATE: 1st AUGUST, 2016

P.C.

1. Applicant-Rajendra Kumar Shah/accused in crime No.171 of 2016 registered with Sinhagad police station, Pune for the offence punishable under section 306 of the Indian Penal Code at the instance of Liladevi Bhavarilal Vaishnav by this application is seeking pre-arrest bail.

2. Heard learned counsel for the Applicant/accused. By drawing my attention to the FIR lodged by the widow of the deceased the learned counsel argued that even if the averments in the FIR are taken to be true, then also no offence punishable under section 306 of the Indian Penal Code is made out. As against this learned APP argued that the FIR as well as statement of the witnesses goes to show that deceased Bhavarilal Vaishnav was under

tremendous mental pressure because of non-payment of consideration by the present Applicant even after purchase of factory in the year 2006.

3. Perused the papers of investigation including the FIR as well as alleged dying declaration of deceased Bhavarilal Vaishnav. The informant averred that her husband Bhavarilal had purchased a factory named Sai Krupa Udyog at Nagar, Taraswadi in Gujarat State in the year 2005. Subsequently in the year 2006 her husband sold out the said factory to the present Applicant by fixing consideration at Rs.16,00,000/-.However, the Applicant had only paid amount of Rs.5,00,000/- to Rs.6,00,000/- up to the year 2012 and thereafter stopped paying balance amount of consideration to Bhavarilal Vaishnav. Said Bhavarilal Vaishnav was in need of money as his son Rajesh had started a driving school. Unable to bear his economic pressure Bhavarilal committed suicide in the intervening night of 12 February 2015 and 13 February 2015 in the office of the driving school of his son Rajesh.

4. It is seen from the papers of investigation that the deceased Bhavarilal had written many chits at the time of

commission of suicide by him. He requested the owner of the premises of the driving school to co-operate with his son. The deceased requested one Balasahab Chavan to help his son Rajesh. So far as the present Applicant is concerned, in one of the chits deceased Bhavarilal is stated to have written that the present Applicant has to pay half of the balance consideration of factory at Bardoli and action should be taken against the present Applicant for recovery of money and money should be paid to his son Rajesh. The deceased had also written that he has to recover some amount from other person also.

5. It is seen that according to the prosecution the present Applicant is indebted to deceased Bhavarilal Vaishnav as he has not paid the balance consideration to the deceased despite purchasing his factory. The Applicant/accused is charged with the offence punishable under section 306 of Indian Penal Code. Abetment is a mental pressure of instigating by stimulating a person to commit suicide. The prosecution is required to establish that the accused was having the knowledge as well as *mens rea* that the victim should end his life. In the case in hand according to prosecution, the present Applicant had stopped making payment of the remaining amount of consideration from the year 2012.

6. ***Prima facie*** it is seen that this act is not having nexus with the commission of suicide. Considering the nature of offence against the present Applicant, his custodial interrogation is not warranted. Hence the following order:

O R D E R

- (i) Application is allowed.
- (ii) In the event of arrest, Applicant in crime No.171 of 2016 for the offence punishable under section 306 of the Indian Penal Code police station Sinhagad be released on bail on executing P.R.bond in the sum of Rs.25,000/- with one or more surety in the like amount.
- (iii) As a condition of this order, Applicant/accused shall attend police station Sinhagad on 14 August 2016 and 21 August 2016 between 11.00 a.m. to 1.00 p.m. and shall co-operate with the Investigating Officer;
- (iv) Applicant-accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts either to the Court or to any police Officer and that he shall not tamper with the evidence;

(v) Applicant/accused shall inform his latest place of residence and cell number after his release and continue to inform the change in residence or cell number, if any from time to time to the Investigating Officer of the concerned police station and on filing the charge sheet to the concerned Court;

(vi) Applicant/accused shall co-operate for expeditious disposal of the trial;

(vii) Applicant/accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;

(A.M.Badar, J)