

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI.ANTICIPATORY BAIL APPLICATION NO.1209 of 2016**

Prakash Annaso Katkar	.. Applicant
vs	
State of Maharashtra	.. Respondent

Mr.Ganesh Gole for Applicant
Mr.Arfa Sait Additional Public Prosecutor for Respondent

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

P.C.

1. Applicant-Prakash Katkar/accused in crime no.77 of 2016 for the offence punishable under section 306 of the Indian Penal Code registered at police station, Hupri at the instance of Subhash Surendra Methe by this application is praying for pre-arrest bail.

2. Heard learned counsel appearing for Applicant/accused. He argues that even if it is assumed that the present Applicant had instigated a lady named Swapnali to lodge a FIR of report for the offence under section 376 against brother of the deceased then also it cannot be said that present applicant was having **mens rea** as well as knowledge that by his act the brother of Vinayak would commit suicide.

3. I have heard the learned APP. Learned APP argued that an FIR came to be registered against Vinayak Methe elder brother of Amol Methe (since deceased.) The averments in the FIR against Vinayak Methe were to the effect that he committed rape on the prosecutrix on 19 June 2016. According to the APP, it was the present Applicant who instigated the said lady to lodge a report against Vinayak Methe and unable to bear with humiliation caused to the family because of this false report, Amol indulged in self-effacement. Learned APP further argued that just prior to commission of suicide Amol had a talk with the present Applicant at about 10.43 a.m. of 23 March 2016. Learned APP relied on the suicidal note written by the deceased Amol. My attention was drawn to the statement of Pratap Methe who is a friend of the deceased Amol. The learned APP submitted that Pratap Methe had heard the oral dying declaration of Amol which depict provocation of the present Applicant to Amol to end his life. Learned APP drew my attention to the statement of Shankar Bokare and Vijay Nalavade to point out that these statements would reflect that the present Applicant had a meeting with the victim of rape in order to instigate her to lodge a false report against the elder brother of deceased Amol. The learned APP further argued that the statement of Subhash Methe shows that

in what circumstances Amol committed suicide. The Applicant had demanded an amount of Rs.2,00,000/- to Rs.3,00,000/- from Amol for settling the matter of FIR against his brother Vinayak.

4. Perused the papers of investigation in this offence under section 306 read with section 34 of the Indian Penal Code. Apart from the present Applicant, Swapnali Yuvraj Thombre, her husband Yuvraj Balasaheb Thombre, mother of Yuvraj Thombre Smt. Jaishree @ Balasaheb Balabai Balasaheb Thombre are accused in this crime.

5. The FIR of the crime in question was lodged on 23 June 2016 by Subhash Methe father of deceased Amol. The informant reported that on 22 February 2016 Swapnali Yuvraj Thombre had lodged a report against his son Vinayak with an averment that Vinayak had committed rape on Swapnali on 19 June 2016. Accordingly, crime No.77 of 2016 under section 376 and 506 of the Indian Penal Code came to be registered against Vinayak Methe. The informant-father Subhash Methe further reported that this incident was published in local newspaper. Then he along with Amol (since deceased) went to police station to meet Vinayak. Then they

contacted an Advocate. The informant further reported that thereafter he went to Ichalkaranji to arrange for bail for his elder son Vinayak on 23 June 2016. There he heard that his younger son Amol committed suicide by consuming poison. According to the informant, present Applicant Prakash Katkar had instigated Swapnali to lodge a report against Vinayak Methe which ultimately resulted in commission of suicide by Amol.

6. At the instance of learned APP I have perused statement of accused Swapnali Yuvraj Thombre who is the informant in crime No.75 of 2016 registered against Vinayak Methe brother of deceased-Amol. The FIR in crime no.75 of 2016 lodged by Swapnali against Vinayak Methe is to the effect that on 19 June 2016 when she was alone at her house, Vinayak Methe who is the friend of her husband Yuvraj Thombre came inside her house and committed rape on her by threatening her. Statement of Swapnali recorded by the Investigating Officer in this crime is to the effect that Vinayak Methe is friend of her husband Yuvraj Thombre and he used to come to their house frequently. Accused-Swapnali has stated to the police in this crime that on 21 January 2016 her husband Yuvraj Thombre had been to the neighbouring house of her cousin mother-in-law

Sulochana for enquiring about health of Sulochana. According to Swapnali, Sulochana had witnessed that Vinayak Methe ran away from her house by jumping from the wall of the house and this fact is disclosed by Sulochana to her husband Yuvraj Thombre who questioned her about the incident. In the FIR lodged by Swapnali in crime No.75 of 2016 averments are to the similar effect. The learned APP has submitted that the Investigating Officer is contemplating to make Swapnali a witness in this crime.

7. Be that as it may, from the FIR lodged by Swapnali as well as her statement, it is apparent that Sulochana her cousin mother-in-law had seen the elder brother of deceased Amol running from the house of Swapnali by jumping from wall of the house and ultimately this has resulted in lodging an FIR against Vinayak. According to the learned APP, it is the present Applicant who instigated Swapnali to lodge a FIR which has resulted in registration of crime no. 75 of 2016 against Vinayak Methe. Statement of the witnesses do show that the present Applicant had contacted Swapnali. It is also seen from the call details records that prior to his death Amol had a telephone conversation with the present Applicant. Question would be whether *prima facie* it could be said

that the present Applicant had desired a result of commission of suicide by Amol Methe by instigating Swapnali to lodge an FIR against his brother Vinayak Methe. It is well-settled that abetment involves mental process of instigation and stimulation to a victim to commit suicide. In the case in hand, *prima facie*, there was some overt act on the part of the elder brother Vinayak Methe which has resulted in registration of crime against Vinayak Methe. Statement of mother of Vinayak Methe and deceased Amol goes to show that the present Applicant had a talk with the deceased Amol wherein the present Applicant has stated that an amount of Rs.2,00,000/- to Rs.3,00,000/- shall be required to be spent for getting the family out of this issue.

8. Even if the averments as made and reflected from the case diary are considered then at the most it can be said that the present Applicant was a cause for the suicide of Amol. However, by that it cannot be said that the present Applicant had instigated commission of suicide by Amol. Prima facie, no active role or stimulation with requisite intention and knowledge are reflected from the material gathered from the Investigator. It is also averred that several offences are lodged against the present Applicant. The

learned APP has placed reliance on the police report in that regard. However learned counsel for the applicant by submitting photocopies of several judgments submitted that in all the offences registered against him the Applicant is already acquitted by the competent Court.

9. Be that as it may, considering the averments as well as material in support of the averments against the present Applicant, his custodial interrogation in the crime in question is not warranted as even the suicide note written by the deceased does not show that the present Applicant was harbouring requisite intention as well as *mens rea*. Hence the following order :

ORDER

- (i) Application is therefore, allowed.
- (ii) Interim order granting anticipatory bail to the Applicant on 20 July 2016 is confirmed on same terms and conditions.
- (iii) In addition, Applicant to remain present before the Investigating Officer on 14 August 2016 and 21 August 2016 between 11 a.m. to 1.00 p.m. and he should cooperate with the Investigating Officer.

(iv) 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;

(v) Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with the facts of accusation against them so as to dissuade them from disclosing such facts either to the Court or to any Police Officer and that they shall not tamper with the evidence;

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

(vii) Applicant shall co-operate with the Investigating Officer by visiting the concerned police station as and when reasonably called.

(A.M.BADAR, J)