

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1319 OF 2016

Bholanath Babadin Tiwari
and anr .. Applicants
Versus
The State of Maharashtra .. Respondent

Mr.A.P. Mundargi, Sr. Advocate i/b Mr.A.M.Saraogi, Advocate for the accused.

Ms.Yogita M. Deshmukh, Advocate for Intervenor.

Ms.S.S.Kaushik, APP for the Respondent State.

API Jitendra Thakur from LCB Palghar, Local Crime Branch present.

CORAM : PN. DESHMUKH, J

DATED : 9th AUGUST 2016

P.C. :

1 Both the applicants involved in Crime No.I-49 of 2016 registered on 16th March 2016 by Palghar Police Station for the offence under Section 306 r/w Section 34 of the IPC, has sought Anticipatory Bail.

2 Admittedly, the incident of deceased Kamlakar Baburao Patil committing suicide by hanging in his house, occurred on 19th February 2016. It is the case of complainant –

Rahul son of deceased that inspite of his lodging a complaint, since no steps were taken by concerned police, he filed a private complaint before the learned Court of Magistrate at Palghar on 9th March 2016 and on the strength of order passed by the Court under Section 156(3) of Code of Criminal Procedure, FIR is registered on 16th March 2016.

3 Learned counsel for the applicants by referring to documents annexed with the application as well as compilation of documents filed by the learned counsel for Intervenor had prayed for grant of bail, contending that from the set of documents, there is nothing to establish that applicants, had in any way, instigated deceased for commission of suicide. As the documents relied are old i.e. of the year 2011, and by referring to contents of such documents, has also contended that deceased prior to his committing suicide, had already accepted amount of Rs.11,00,000/- (Rupees Eleven Lakhs) against two galas which were in his occupation in a building prior to its redevelopment carried out by applicants. Thus, it is the case of applicants that deceased since has relinquished his right over such property of accepting money, there is no substance in the case of complainant of applicants' harassing deceased, due to which he committed suicide. He therefore, prayed that the application be allowed.

4 Learned APP had opposed the application, contending that the investigation carried out, so far clearly establish involvement of applicants as a person who have instigated commission of suicide who in their capacity as builder in respect of a structure, were required to provide two galas to deceased.

However, since they did not provide the same, deceased was facing tremendous hardship, and in the background of such facts, was required to obtain hand-loan from co-accused, and since could not repay the same, had committed suicide. By referring to the statement of complainant Rahul which came to be recorded on 20th February 2016, it is submitted that son of deceased, on that day, was not at all aware of any of the facts which led commission of suicide by deceased, and thus, had submitted that merely if in such statement, complainant had stated that he was not aware of any reason which led his deceased father to commit suicide, that by itself cannot be a ground for grant of bail. It is also contended that the documents relied by applicants does not appear to be truthful in view of the fact that no one would relinquish their right over a property consisting of 2 galas situated at Palghar for a meager amount of Rs.11,00,000/-.

5 One of the grounds put forth by prosecution opposing application is that the applicants are influential persons in the locality, and has in fact, influenced the Investigating Officer in the very crime who was initially investigating the same, and with his assistance, has tampered the Call details and had deleted the SMS details from the handsets of deceased though the handsets were seized earlier, and are returned back to complainant by the first Investigating Officer after deleting such data therefrom. It is therefore, contended that application be rejected.

6 Learned counsel appearing for the Intervenor has referred to suicide note and contended that names of applicants along with two accused are mentioned therein who have provided

ill-treatment and harassment to deceased continuously till he committed suicide. It is further submitted that complainant though was not aware of the facts which led to commission of suicide by his father, it is only after recovery of suicide note and mobile phone of deceased from the spot and knowing contents thereof, involvement of applicants has revealed and thus, statement of complainant which came to be recorded on 20th February 2016 does not establish involvement of applicant, as at that time, complainant was not aware of facts in details.

7 Learned counsel for the Intervenor by referring to the recitals in the documents relied by the intervenor, had contended that applicants, in their capacity as a developer of a property initially owned by father of co-accused no.3 were required to provide two galas to deceased. However, they did not act upon the deed of sale, and as stated, as no galas were provided, deceased was under mental stress, and has also sustained monetary loss, which led him to obtain hand-loan from co-accused Yadav and ultimately end his life by committing suicide on 19th February 2016.

8 In the background of submissions as aforesaid, I have perused documents filed with the application as well as case diary made available by the learned APP and the documents filed by the Intervenor.

9 As stated above, complainant Rahul Patil - son of deceased had filed a private complaint before the learned Court of Magistrate at Palghar against both the applicants and two others,

one of whom is a son of original landlord of premises where deceased was having 2 galas and redevelopment of the building by applicants was to get back into same galas, and a person against whom applicant is said to have obtained hand-loan who are made co-accused nos.3 and 4 respectively.

10 It is material to note that the complaint is filed on 9th March 2016, stating therein that deceased was running business under the name and style of “Palghar Cycle Mart”, and was having two galas in a building located near market at Palghar on tenancy basis which were used as godown for storing bicycles. Dada Talwalkar, original owner of said premises and his son Abhijeet, had agreed to provide two galas to deceased on its redevelopment, which was to be carried out by applicant no.1. However, on completion of redevelopment work, applicant no.1 and co-accused Abhijeet refused to provide any galas to deceased. It is further stated that due to poor financial condition, deceased, could not initiate any legal recourse. Pausing here, it is to be noted that though, according to the complainant, deceased inspite of not getting two galas, did not chose to initiate any proceedings in the Court of Law, for want of sound financial condition. In the preceding paragraph, it is stated that as deceased was not provided with two galas which were admittedly at Palghar, deceased started business of sale of four-wheeler tyres at Thane. As such, it cannot be said that financial condition of deceased was poor. It is further stated that during that period, deceased used to receive phones from co-accused Abhijeet and Yadav, due to which he used to be under tremendous tension. However, at no point of time, complainant asked the reason for the same to his deceased father.

11 Rest of the contents of the complaint are with reference to his receiving information of the incident of his father committing suicide by hanging on 19th February 2016 while he was in Pune, and about his coming to knowledge of suicide note, and of alleged intervention in the investigation by applicants, stating them to be highly influential person and about earlier Investigating Officer on their say, not collecting evidence against them.

12 Admittedly, vide order dated 3rd May 2016 of this Court passed in a Writ Petition filed by complainant, investigation is transferred to the Sr. Inspector of said Police Station. It further appears that this Court had also directed said Investigating Officer to submit final report of investigation to Superintendent of Police, Palghar within four weeks. Learned APP, on obtaining instructions from Investigating Officer, however, states that no such report is yet submitted.

13 Without going into much details on above aspect, spot panchnama dated 19th January 2016 produced in the case diary reveals that that one chit came to be seized near from the washing machine from the house of deceased. Learned APP submits that the date is wrongly mentioned in this document as “19th January 2016” at both the sides. It should be read as “19th February 2016”.

14 In the background of above facts on considering *tripartite* agreement which is titled as “*Samjhota Patra*” entered into between deceased on one part and co-accused Abhijeet and his mother being heirs of Ashok Tondwalkar on the second part

and parents of applicants and two relations from their family as third part. It is revealed that in the year 2011, deceased was in possession of two galas since 1989 which building was to be redeveloped, and it was agreed between the original landlord and deceased that deceased will be provided two galas in the newly constructed building, which agreement was registered on 30th March 2005.

15 Original landlord Ashok Dattatray Tondwalkar died after some time and his legal heirs on 29th December 2008 by entering into registered sale deed handed over other lands being Survey Nos.1157, 1158, 1159, 1251 and 1254 to the parents and other relations of applicants, and in the same agreement, applicants have agreed to provide one gala admeasuring 320 sq.ft to the landlord in the redeveloped building as per market rate.

16 The contents of this document which are relevant so far as present applications are concerned, are to the effect that deceased being party no.1 of its agreement on accepting Rs.11,00,000/- relinquished his right over two galas, which amount appears to have seen paid to him by party no.3 in one stroke by cheque. Thus, in sum and substance, deceased on accepting above amount, has relinquished his right over said property which was in his possession as a tenant since 1989.

17 Considering facts, as aforesaid, it is therefore, prima facie found that merely on the strength of suicide note wherein names of applicants are mentioned, there is nothing on record to establish that the applicants, till deceased committed suicide on

19th February 2016, had instigated or abetted deceased to commit suicide.

18 In that view of the matter, and since from above discussed facts, it *prima facie* appears that deceased much prior to his committing suicide, on accepting certain amounts from the family members of applicants, has relinquished his right over two galas. Case of complainant about deceased having been deprived of his right to have two galas by the applicants etc. as mentioned in the suicide note, *prima facie*, does not appear to be convincing to be relied upon.

19 In that view of the matter, application is liable to be allowed by imposing suitable conditions upon the applicants to facilitate further investigation, thus following order is passed :

O R D E R

In the event of arrest of applicants in Crime No.39 of 2016 registered by Palghar Police Station, they shall be released on bail on their executing P.R bond in the sum of Rs.25,000/- each with one in like amount each

While on bail, applicants shall attend Investigating Officer on 11th, 12th, 13th August 2016, and thereafter on 18th, 19th and 20th August 2016 between 4.00 pm to 7.00 pm, and thereafter, as and when called by the Investigating Officer till filing of the charge-sheet.

Applicants shall co-operate with the investigation, and shall surrender their mobile phones, if asked for by the Investigating Officer.

Applicants shall not tamper with the evidence/witnesses.

(PN. DESHMUKH, J)