

FARAD CONTINUATION SHEET

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.****Criminal Application (aba) No. 365 of 2016**

(Jitendra Dharamdas Sakhare vs. State of Maharashtra)

WITH

Criminal Application (aba) No. 355 of 2016

(Sunita w/o Ashokrao Thakre vs. State of Maharashtra)

WITH

Criminal Application (aba) No. 369 of 2016

(Smt. Kavita Deepak Tiwari & ors. vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. Prakash Jaiswal Advocate for applicants in Cri. Applns.
No. 365/16 & 369/16.

Mr. Mahesh Rai Advocate for applicant in Cri. Appln.
No.355/16.

Mr. R.S. Nayak, APP, for the respondent/State.

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Coram : S.B. Shukre, J.

Date : 26th JULY, 2016.

Heard Shri Jaiswal, learned counsel for the applicants, in Criminal Application Nos. 365/16 and 369/16 and Shri Rai, learned counsel for the applicant, in Crim. Appln. No. 355/16 and learned APP for the respondent/State. Perused the case diary and also reply of the prosecution.

It is seen from the allegations made in the F.I.R. dated

27.5.2016 lodged by Virendra Govindprasad Tiwari, brother of the deceased, that offence under Section 306 read with Section 34 of Indian Penal Code has been registered against these applicants only on the basis of certain thoughts entertained by the deceased about the character and conduct of the applicants. The informant does not have any personal knowledge about these thoughts and his source of knowledge is what he was told by the deceased previously before his death and also what was revealed by the deceased through his suicide note written at 1 a.m. of 27.5.2016. The gist of this information, which is the basis of lodging the F.I.R. against these applicants, is that these applicants were indulging in illegal flesh trade and as the deceased refused to support them in carrying on such an illegal business, they harassed him.

According to deceased, two F.I.Rs. filed on 24.5.2016 and 25.5.2016 by Rani Kishor Shyamfule and Mayuri Jaiswal alleging their molestation and sexual harassment by the deceased, were filed falsely in order to pressurise the deceased for allowing and helping the applicants in their illegal business. Thus, the lodging of F.I.R. and the nagging of the deceased by all these applicants constantly for drawing him into flesh trade were the acts perceived by the deceased as intolerable harassment leading him to a situation of frustration.

Learned counsel for the applicants submit that the perception of the deceased about the harassment at the hands of the applicants cannot be considered to be abetment of suicide, for the abetment can be seen, as defined in Section 107 of Indian Penal

Code, only when there is intentional aiding or instigation by the accused to a person in such a manner that the person who is compelled to commit suicide does so when all other remedies fail. He submits that such kind of instigation by these applicants even when the allegations made in the F.I.R. are accepted at their face value, is not there in this case and, therefore, it is doubtful if the offence under Section 306 of Indian Penal Code would be constituted or not.

Learned APP, however, differs. In his opinion, the background facts of the whole matter are sufficient, at this stage, itself to prima facie indicate that the offence of abetment of suicide under Section 306 of Indian Penal Code has been constituted in this case and these applicants having harassed and made his life miserable are responsible for his suicide and, thus, their custodial interrogation would be required. He also submits in reply to the argument canvassed on behalf of the applicants that the deceased had suicidal tendency as, at least, on two occasions, he had attempted to commit suicide, that if these applicants had the knowledge that the deceased had suicidal tendencies they would have taken enough care to make amends in their conduct *visa-a-vis* the deceased so that the deceased was brought back into stable state of mind and as these applicants did not do so, it would be an additional circumstance for holding prima facie these applicants responsible for the death of the deceased.

As stated earlier, the only ground for registration of the offence of abetment of suicide against these applicants is the

conduct of these applicants towards the deceased which was perceived and felt by the deceased as not only obnoxious but also intolerable compelling him to take extreme step of terminating his own life. As rightly submitted by learned counsel for the applicants, abetment would be constituted only when there is intentional aiding or direct or indirect instigation by the applicants in order to compel the deceased to commit suicide. Now, if the allegations made by the deceased against these applicants that they were forcing him to agree to their ways of behaviour is accepted as it is, the question would be, whether such conduct on the part of the applicants by itself could be taken as instigation or intentional aiding or not. The law is well settled in this regard. Such acts, prima facie, have to be understood as creating a position of discomfiture for the deceased and not the situation of desperation wherein the deceased feels that no remedies are left open to him and the only option left to mitigate the situation is of commission of suicide. If the applicants had pressurised the deceased one way or the other, the deceased could have taken recourse to law. It appears that the deceased did not resort to any remedy available under the law as there is no material available on record from which it can be seen that the deceased had previously filed some complaints against these applicants and no action was taken in those complaints. Learned APP also could not show to me that the deceased had made any attempt in the past to take shelter under the provisions of law so as to make these applicants behave properly. In such circumstances, it is quite difficult to accept the contention that without any doubt offence

punishable under Section 306 of Indian Penal Code is prima facie constituted against these applicants.

In the month of May, 2016, at least, two complaints were registered against the deceased. Both these complaints were in respect of molestation and sexual harassment of the complainants therein who were the friends of the 16 years old daughter of deceased, Ms. Tanisha. There is absolutely no material available on record that these complaints were prima facie motivated and had been made with a view to falsely implicate the deceased. These complaints, therefore, would prima facie show some unusual character of the deceased. Added to these complaints, there are incidents of the deceased attempting to commit suicide twice in the past. These incidents are of 14.3.2015 and 20.4.2015. On the first occasion, admittedly, the deceased attempted to commit suicide by consuming Organophosphorous compound and on the second occasion he attempted to commit suicide by consuming some insecticidal compound. The doctor had certified that the deceased was under depression and had suicidal tendency. It is not known as to what was the reason for the deceased entertaining such suicidal thoughts. Although, it is submitted by the learned APP that the probable reason for the deceased to make such attempts earlier was the harassment being meted out to him by these applicants, the argument cannot be accepted for the reason that there is absolutely no material available on record from which such probable reason could be ascertained. Therefore, it will have to be said that the prima facie reason for commission of the suicide by the deceased

possibly could be different.

Even otherwise, considering the nature of the allegations made against these applicants, I do not think that their custodial interrogation would be required. In the circumstances, I am of the view that this is a fit case for confirmation of interim anticipatory bail to all the applicants. Accordingly, I am inclined to allow all these applications.

The applications are allowed and the interim bail granted to the applicants is confirmed on the same conditions on which they were respectively granted interim anticipatory bail. However, now they are directed to attend police station Koradi on 28.7.2016 from 3 p.m. to 6 p.m. and thereafter on such dates and time as may be required by the Investigating Officer. They are further directed to co-operate with the police in the investigation and not to tamper with the prosecution witnesses in any manner.

Judge

/TA/

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