

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5626 OF 2017

1. Arjun Narsingrao Somwanshi
Age: 74 years, Occu.: Retired Lecturer
from Shamlal Memorial Arts and Science
College at Udgir,
R/o Anand Nagar, Nanded Naka,
Udgir, Tq. Udgir, Dist. Latur.

2. Anil Vitthalrao Janapurkar
Age: 40 years, Occu.: Agri. And Business,
R/o Shelhal Road, Udgir,
Tq. Udgir, Dist. Latur.

.APPLICANTS

VERSUS

1. State of Maharashtra
Through the Officer Incharge,
Udgir Rural Police Station,
Dist. Latur.

2. The Superintendent of Police,
Latur.

..RESPONDENTS

**WITH
CRIMINAL APPLICATION NO. 5629 OF 2017**

Aniruddha Arjunrao Somwanshi
Age: 38 years, Occu.: Business,
R/o A-1101, Mont Vart Grand Sus Road,
Near Sai Chowk, Pashan, Pune City,
Tq. & Dist. Pune.

.APPLICANT

VERSUS

1. State of Maharashtra
Through the Officer Incharge,

Udgir Rural Police Station,
Dist. Latur.

2. The Superintendent of Police,
Latur.

..RESPONDENTS

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Mr. R.S. Deshmukh, Advocate for applicants.
Mr. A.S. Shinde, A.P.P. for respondents.
Mr. S.R. Sirsat, Advocate h/f Mr. S.S. Jadhavar, Advocate for Assist to P.P.

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CORAM : V.L. ACHLIYA, J.
DATED : 14th NOVEMBER, 2017

ORDER :

1. The applicants have preferred this criminal application seeking pre-arrest bail on an apprehension of arrest in connection with offence registered u/s 306 r/w 34 of I.P.C. vide C.R. No. 0385 of 2017 with Udgir Rural Police Station.

2. Heard the learned Counsel for the applicants, the learned A.P.P. for the State and the learned Counsel representing the informant. Perused the copy of F.I.R. and other documents relied in support of respective applications.

3. It is the contention of the learned Counsel for the applicants that if the allegations made in the F.I.R. are taken to its face value, it make out no offence u/s 306 of I.P.C. against the applicants. By referring the facts stated in

the F.I.R., the learned Counsel submits that the informant has made grievance that the applicants who were required to pay Rs.40 lakh to her deceased father-in-law and husband, they have not paid that amount; father in law of applicant died due to heart attach because of non payment of amount to be payable by applicants. Due to financial crisis, the husband of informant was required to take loan of Rs.1 lakh from one Rohan Kamble on monthly interest of Rs.5/-. For repayment of that loan he was forced by co-accuse to take loan from Shriram Finance company. The amount of loan sanctioned by the said financial company was withdrawn by accuse named in F.I.R. By referring development agreement and deed of partnership executed in between the applicants and the deceased father-in-law and deceased husband of the informant, the learned Counsel submits that the applications have made the payment towards the price of the plot to deceased father of informant. So also two flats and two shops were also given to the deceased father-in-law of the informant. He submits that in order to attract the offence u/s 306 of I.P.C., there must be an act of abatement as contemplated u/s 107 of I.P.C. No such act of abetment being committed by applicant forcing deceased to commit suicide committed on the part of applicants. He submit that on the basis of false complaint lodged the applicants are likely to be arrested, humiliated and harassed.

4. On the other hand, the learned A.P.P. and the learned Counsel representing the informant opposed the application with contentions that the deceased father-in-law and the deceased husband of the informant were cheated by the applicants. As per the development agreement, amount of Rs.40 lakh was agreed to be paid to the deceased father-in-law of the informant. Due to non payment of the said amount, father-in-law as well as husband of the informant were put to serious financial crisis. They lost their peace of mind. Father-in-law of the informant died on account of heart attack due to failure to dishonour the commitment made on the part of the applicants. The husband of the informant also require to take loan from other financial institution. He too lost mental peace. Due to this reason, he committed suicide. It is contended that cumulative effect of the acts committed on the part of the applicants has resulted into commission of suicide by the deceased husband of the informant.

5. In order to appreciate the submissions advanced, I have perused the copy of F.I.R. as well as copies of development agreement, partnership deed, sale deed, etc. In order to attract the offence u/s 306 of I.P.C. there must be an act of abatement on the part of the person alleged to have abetted the deceased to commit suicide. It necessarily requires some act of aiding and abetting the deceased to commit suicide. If we consider the act alleged in the light of the

allegations made in F.I.R., then complainant herself stated that due to non-payment of Rs.40 lakh, which was agreed by the applicant, deceased husband of the informant put to financial crisis. The development agreement entered in between the applicants, the deceased father-in-law and deceased husband of the informant reveals that they had decided to develop the property which was owned by the deceased – father-in-law of the informant. In terms of settlement it was agreed to pay Rs.10 lakh to father-in-law of the informant. It also appears that partnership firm was constituted by the applicants, the deceased father-in-law and husband of the informant to develop the property and share the profit in terms of share defined in deed of partnership entered amongst them. The plot owned by the father-in-law of the informant was sold to M/s Kuber Constructions, a partnership firm established by the applicants, the deceased father-in-law and husband of the informant for a valuable consideration of Rs.16,41,000/- by registered sale-deed. On development of said property, flat nos. 102 and 302 were given to the deceased father-in-law and deceased husband of the informant. So also two shop premises also came to their share. In the complaint lodged, the complainant has alleged that Rohan Kamble who was acting as mediator between the applicants and her father-in-law had advanced loan of Rs.1 lakh on monthly interest of Rs.5% to her deceased husband. Since he has not paid the loan amount, Rohan Kamble and co-accuse named in the F.I.R. forced him to take loan from Shriram

Finance Company. After getting loan sanctioned, the amount was withdrawn by them by falsely taking his credit card. So far as the act of forcing the deceased husband of the informant to secure the loan from Shriram Finance Company and withdrawal amount is concerned, the allegations are not against them. Therefore, even if it is presumed that deceased was under financial crisis, still the applicants cannot be said to have intended the deceased to commit suicide. Considering the overall facts and circumstances of the case, I am of the view that there is no prima facie case to attract offence u/s 306 of I.P.C. as against the applicants. In this view, case is made out to entertain the application seeking anticipatory bail filed by the applicants. Hence the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of the applicants in connection with offence registered u/s 306 r/w 34 of I.P.C. vide C.R. No. 0385 of 2017 with Udgir Rural Police Station, the applicants be released on bail on furnishing bail in the sum of Rs.25,000/- with one surety in like amount on the following conditions:-
 - (a) The applicants shall attend the Udgir Rural Police Station from 16th November, 2017 to 18th

November, 2017 in between 11 a.m. to 5 p.m. and cooperate in investigation.

(b) On and after 18th November, 2017, they shall appear before the Investigating Officer as and when summoned by the Investigating Officer for the purpose of investigation.

(c) The applicants shall not contact the complainant and any other witnesses and indulge into act amounting to tampering the prosecution and similar in nature.

(d) The applicants shall attend the Udgir Rural Police Station on every Sunday between 10 a.m. to 11 a.m. till filing of charge-sheet.

(iii) In the event of breach of any of the condition, anticipatory bail granted to the applicants shall liable to be canceled.

(iv) Application is disposed off in view of the above.

(V. L. ACHLIYA, J.)

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