

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO. 5791 of 2017.**

AMOL S/O BHAGWAT GAIKWAD.

VERSUS.

STATE OF MAHARASHTRA

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Advocate for the Applicant : Mr. S.S. Deshmukh.

APP for Respondent/State : Mr. A.S.Shinde.

CORAM : V.L. ACHLIYA, J.

DATE : 24th November, 2017

ORAL ORDER:

1 The applicant apprehending arrest in connection with Crime No. 254/2017 registered at Pimpalner Police Station, District Beed, for the offences punishable under sections 306, 506 r.w. section 34 of the Indian Penal Code and under section 32(b) of Money Lending Act, has preferred this application seeking anticipatory bail.

2. Heard learned counsel for the applicant and the learned APP for the respondent/State. Perused the papers of investigation.

3. In short it is the contention of the learned counsel for the applicant that if the entire allegations made in the first information report are taken into consideration, then it makes out no case to

attract the registration of offence under section 306, 506 of the Indian Penal Code as well as section 32(b) of the Money Lending Act. It is pointed that in the first information report, the applicant has alleged that he had taken loan of Rs. 5,00,000/- on interest and towards repayment of loan his father-in-law executed sale-deed in favour of applicant. It is further alleged that even after execution of sale-deed there was demand to pay more amount by co-accused Santosh Gaikwad. In this background it is contended that there are no allegations against the applicant that he abetted the commission of suicide by deceased. He further submits that only allegation against the applicant is that in the year 2017 after the declaration of election programme of election of village panchayat, Kundlik Haribhau Khade, Ganesh Haribhau Khade, Namdeo Haribhau Khade, Haribhau Khade, Santosh Gaikwad and present applicant asked informant not to participate in the process of village panchayat election and gave threat that if he refused to withdraw the application filed before Collector, seeking cancellation of election, they will kill him and his family. He submits that allegations made in F.I.R. are not sufficient to invite registration of offence under

section 306 of the Indian Penal Code. In order to attract the offence under section 306 of I.P.C., there must be an act amounting to abetment to commit suicide, committed on the part of the accused.

4. It is further contended that co-accused namely Kundlik, Ganesh, Namdeo, Haribhau are granted anticipatory bail by Additional Sessions Judge Beed, vide order dated 11.10.2017 passed in Criminal Applications No. 579/2017 and 601/2017. The case of the applicant stands on same footings.

5. On the other hand learned APP has opposed the application with contention that after the death of deceased, suicide note was found in the pocket of deceased, wherein; the deceased has mentioned that in spite of repayment of loan there was a constant demand to pay more amount and therefore he is committing suicide. He submits that during the course of investigation police have recorded statement of one of the witness to whom the deceased talk on phone before committing suicide. He has stated that deceased told him that inspite of execution of sale-deed he is forced to pay more money and therefore he is committing suicide. In this background, learned APP submits that

there is prima-facie case against the applicant in attract the offence under section 306 of the Indian Penal Code.

6. On due consideration of the submissions advanced in the light of the overall facts of the case, I am of the view that case is made out to grant anticipatory bail to applicant.

7. If the allegations made in the first information report are taken into consideration, the the allegations made against the applicant restricts to threat given on account of election to village Panchayat. The sale-deed was executed by father-in-law of deceased in favour of applicant in the year 2013. It is no where case of prosecution that applicant gave threat to deceased on account of any amount of loan. All such allegations are made against co-accused Santosh. In fact there is suicide note left by deceased. What is termed as suicide note, is a copy of application/representation made to Superintendent of Police, against co-accused Santosh. By said representation deceased had sought action against co-accused Santosh.

8. The accused than other than applicant whose

case stands on same footings were granted anticipatory bail by Sessions Court vide order on 11.10.2017. Apart from this, the investigation is completed and charge-sheet has been filed in the case. No case of custodial interrogation of applicant is made out. I am, therefore, inclined to allow the application.

9. It is clarified that the observations made as above are made for the limited purpose of deciding the present application seeking anticipatory bail filed by the applicant. None of the observations made above shall be treated as the expression of view of this Court as to merit of the case of prosecution.

10. In the result, following order is passed.

ORDER

1. Application is allowed.

2. In the event of arrest of the applicant in connection with Crime No. 254/2017 registered at Pimpalner Police Station, District Beed, for the offences punishable under sections 306, 506 r.w. section 34 of the Indian Penal Code and under section 32(b) of the Money Lending Act, the applicant be released on his furnishing bail in the sum of Rs. 25,000/- with one surety in the like amount, on

following condition.

- (i) Applicant shall appear before the Investigating officer on 28.11.2017 at 11 a.m. and thereafter continue to appear as and when directed by the investigating officer.
- (ii) The applicant shall not indulge into any act amounting to tampering the prosecution witnesses.

11 Criminal application stands disposed of in above terms.

(V.L.ACHLIYA, J.)

mkd/-