

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1748 OF 2015

Mr. Tinku alias Yash Kishor Singh ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr.A.P.Mundargi, Senior Counsel i/b. Mr. Amol A. Patankar, Advocate for the applicant.

Mrs.R.M.Gadhvi, APP, for the State.

Mr. M.D.Hiremath, PI, Shivaji Park Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.
ORDER RESERVD ON : 1st March, 2017.
PRONOUNCED ON : 17th March, 2017.

P.C.

Heard. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 21.2.2015 in Crime No.68 of 2015 registered at Oshiwara Police Station for the offences punishable under Sections 306, 354A, 504, 506, of the Indian Penal Code. The investigation is completed and charge sheet is filed on 18.5.2015. The case is committed to the Court of Sessions on 3.6.2015. The applicant is also charge-sheeted for the offences punishable under sections 376, 323, 292 of IPC and Section 67 of the Information Technology Act, 2005.

2. It is the case of the prosecution that the applicant herein had approached Oshiwara Police Station on 20.2.2015 and informed that Ms. 'X' who was working as a maid and her brother Somnath had committed suicide in the drawing room of their house. The police had reached the spot. Investigation was set in motion. ADR No.12 of 2015 was registered. At that juncture, the applicant had informed the police that the mother of deceased Bharati is residing within the jurisdiction of Oshiwara Police Station in the house of one Manoj Patel. The applicant had attempted to call upon Shikha i.e. the mother of deceased Bharati as well as Manoj Patel to inform them about the suicidal death of Bharati. The phones were switched off. Hence, on 21.2.2015 in the morning, the applicant along with his sister Poonam Singh and the police reached the flat of Manoj Patel. The doorbell was not answered. The fact that the newspapers of that day were still lying outside, the police upon suspicion, called a key maker. The first door could be opened. However, the internal door was locked from inside. Hence, the police had to call firebrigade. The flat was broken open. The dead body of Manoj Patel was lying near the kitchen, whereas Shikha was found hanging in the kitchen. ADR No.13 of 2015 was registered under Section 173 of Cr.P.C.

3. In the course of conducting search in the said house, the police

had seized a chit below the handset of Nokia Company which led the police to open the fridge, wherein they found a packet containing Rs.50,000/-. That was a gift to the police by deceased Shikha and Manoj. They also found letters purportedly written by Bharati holding the applicant responsible for her death as she was molested, sexually abused and forced to marry him. Another letter was found alleging that Deepali Singh i.e. sister of the applicant obtained two Passports on the basis of fabricated documents such as gas connection and driving licence and it was also contended that the police may investigate the same.

4. On the basis of the suicide Note, Crime No.68 of 2015 was registered against the applicant for the offences punishable under Sections 306, 354A, 506, 504 of the IPC.

5. On 21.2.2015, PSI Ecorist Gaikwad lodged a report at the police station alleging therein that on 20.2.2015, at about 4.30 p.m., Tinku Singh i.e. the present applicant had informed the police that his maid and her brother had committed suicide by hanging. The police had lowered the dead bodies from the hook. On 21st February, the police along with the applicant had reached the house of Manoj Patel. The house was broke open and the dead bodies of Shikha and Manoj Patel were found. In the house of Manoj Patel, they had found a chit written by deceased Bharati in English

contending therein as follows :-

“I Bharati work as maid + cook at address Shslira 402 Lokhandwala Complex, Yamuna Nagar. I do commit suicide by hanging myself on ceiling hook as I am fed up harassment by name Tinku Kishor Gandharva. Tinku K. Gandharav is responsible for my death.”

The police had read the contents of the suicide note written by Bharati in which she had stated that she was sexually abused by the applicant and he was insisting upon her to marry him. That he has abused her and assaulted her for last 3 years and upon refusal to marry, he had threatened her of dire consequences such as threats of throwing acid on her face. She wanted to leave the job, but was scared because of the threats extended to her.

6. It is pertinent to note that in the suicidal note, Bharati has referred to “Deepali Kishore Singh i.e. date of birth 14/2/75. Passport No. Z 0113320 had made her fake passport as name Muskan Kishore Sigh Date of Birth 15/12/85 passport No.J 4983950, she has also obtained PAN Card, Driving licence and gas connection from this fake passport so Sir, please verify her passport. I leave all. Xerox copy proof of passports – driving licnce – gas connection”. On a separate sheet of paper, the details

of both passports were given along with the copy of the passports.

7. It is the case of the prosecution that although Bharati was a maid, she had written the suicide note in English as the mother of the present applicant had almost adopted her as a daughter since she was 10 years old and in order to bring her to the standards of her own family, had taught English to Bharati. It is further pertinent to note that in the panchnama, they had also found a memory card and it was mentioned that the video recording is on the memory card. It is further pertinent to note that the transcript of the video recording does not form part of charge-sheet and upon instructions, the learned APP submits that the police officer had gone through the video recording of four persons indicating that they have committed suicide. As far as deceased Manoj Patel is concerned, the suicide note would indicate that he is tired of his illness and has therefore committed suicide. It is surprising that all four of them had committed suicide almost at the same time and they all planned to commit suicide simultaneously. The video recording indicated that children of Shikha, Bharati and Somnath were fed up with working with Tinku Singh as he had assaulted them and since they both are committing suicide, she has also committed suicide. The vide recording of Somnath indicates that he was assaulted when he did not do his job properly and

when he wanted to leave job he was threatened of being falsely implicated in some criminal case. The suicide note of Bharati was in English and she was in fact not speaking at the time of recording but was in fact reading her suicide note. The memory card was seized under a panchnama.

8. The learned Senior Counsel appearing for the applicant submits that the applicant herein cannot be held responsible for having abetted, instigated or facilitated the commission of planned suicide by all four persons. In fact, on 22.2.2017, statement of the present applicant was recorded by the police. On 20.2.2017, before registrations of crimes, the applicant had disclosed to the police that on that day, he along with his sister and his niece were in the bedroom. Bharati and Somnath were cleaning the hall as his mother was to return on that day from a pilgrimage. Bharati and Somnath had locked the door of the hall. After a passage of time, the applicant had kept on calling Bharati and Somnath. The door could not be opened despite best efforts. That he had to finally broke open the door between the hall and the bedroom and at that time he had seen Bharati and Somnath hanging.

9. The learned senior counsel has drawn attention of this Court to the statements of the relatives of deceased Shikha. It appears that they had met her some time in 2014 much prior to the incident. the statement

of one Rahul Singh would indicate that the applicant was in love with deceased Bharati and all the relatives were aware that they were soon to get married. It also appears that the relatives of Bharati were aware of the marriage between the applicant and the deceased Bharati.

10. The learned Senior Counsel submits that in fact the applicant had not met Shikha and Manoj Patel for a very long time prior to the commission of their suicide. There is no material on record to indicate that Bharati was in touch with her mother and Manoj Patel. It is also submitted that the fabrication of the earlier passport by the sister of the applicant has no relevance to the commission of suicide by any of them. It is surprising that Bharati had all the details of both the passports of Deepali. They had requested the police to inquire into the same. The learned senior counsel submits that it cannot be inferred that the forgery of passport by the sister of the applicant would not be a cause for the suicidal death of all four persons. The learned Senior Counsel submits that the possibility that the relationship between the applicant and deceased Bharati was on the verge of breakdown cannot be ruled out. In fact, according to the learned senior counsel, the material collected by the investigating agency would indicate that after the demise of the father of the deceased Bharati, the mother of the applicant had been kind enough to give shelter, protection, education

to Bharati. Since Somnath was not being looked after properly by the relatives as well as Shikha, Somnath was engaged as a domestic servant by the mother of the present applicant. The mother of deceased Bharati had also worked with the applicant and his mother. That Manoj Patel had requested the mother of the applicant to depute some domestic maid to help him in meeting with his domestic chores as he was residing alone. The mother of the applicant had sent Shikha to work for Manoj Patel. However, the material collected in the course of investigation indicates that Shikha had developed intimacy with Manoj Patel and was in a live-in relationship with Manoj Patel

11. It is also submitted that by no stretch of imagination, it can be said that deceased Bharati had no other alternative but to commit suicide in the given circumstances. It is also submitted that in fact her brother was working with her. Instead of extending moral support to each other, they had chosen to commit suicide. It is not the case of the prosecution that the brother and sister were confined by the applicant in any manner. Moreover, the allegation against the sister Deepali had no relevance to the commission of suicide by either of them.

12. The learned counsel submits that the material on record also does not indicate the proximity of any cause for commission of suicide by

all four of them on that particular day. Neither there is any material to indicate that soon before commission of suicide, Bharati and Somnath had met their mother or Manoj Patel and sought help. The neighbours also do not disclose that Bharati and Somnath were being harassed by the present applicant or that the deceased had disclosed to them that they are under pressure.

13. The learned Senior Counsel submits that there is no contemporaneous material on record to indicate that Bharti is the scribe of that suicide note because no material is placed on record to compare the handwriting.

14. The essential ingredient of section 107 of the Indian penal Code would be instigation, facilitation or aiding. In short, Section 107 of IPC requires that there must be instigation, co-operation or intentional assistance and the suicide should have been committed in consequence of the abetment.

15. The learned APP submits that since Bharati was sexually abused by the applicant, she had no other alternative but to commit suicide.

16. The learned Senior Counsel submits that the co-accused Deepali Singh has been granted pre-arrest bail by the Sessions Court.

17. The learned Senior Counsel submits that the video recording does not even remotely indicate as to whether soon before commission of suicide, the applicant had either sexually abused her, assaulted her or had taken any coercive steps to force her to get married or had detained her, confined her or had kept her away from contacting any outsider, much less her mother or even report about the same. Somnath was also major and could have taken effective steps to rescue his sister. It is also submitted that the memory card was found in the house of Manoj Patel. It appears that the whole incident of mass commission of suicide is shrouded with mystery. It is also submitted that in all probability, the whole family had started receding into depression for reasons best known to them.

18. In the case of **Chitresh Kumar Chopra vs. State (Govt. of NCT of Delhi) AIR 2010 SC 1146**, the Hon'ble Apex Court has observed as follows :-

“16. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's

suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.”

19. The learned senior counsel has submitted that the possibility that the family had a desperate tendency which was drawn into action simultaneously cannot be ruled out and the possibility that Manoj patel was in a shock after having learnt about the plan to commit suicide and had joined all three of them also cannot be ruled out. Manoj patel had also made a vague statement that Deepali @ Muskan had an eye on his property and, therefore, he was committing suicide.

20. Lastly, upon perusal of the material on record, this Court is of the opinion that to attract the offence under Section 306 of the IPC, the accused ought to have necessarily committed an act which would connote complicity of the accused in the commission of suicide of the victim. At this stage, it would be necessary to consider whether there was a direct nexus between the cause and the object. In the absence of any nexus between a cause and object **prima facie**, no presumption could be drawn, that the applicant herein was responsible for the suicidal death of

Somnath, Shikha or Manoj Patel. The applicant was arrested on 21.2.2015 and is in jail since then. It is in these circumstances that **prima facie**, this Court is of the opinion that the applicant deserves to be enlarged on bail.

21. The applicant has been in custody for more than two years. As on today, charge is not framed. The application seeking enlargement on bail is pending since 2015 on one count or the other. In view of the guidelines of the Hon'ble Apex Court in the case of **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40** and the recent Judgment of the Hon'ble Apex Court in the case of **Hussain and Anr. vs. Union of India (Criminal Appeal No.509 of 2017)**, this Court is of the opinion that the accused-applicant deserves to be enlarged on bail.

22. The observations are restricted to an application under Section 439 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.1,00,000/- (Rupees one lakh) with one or more local solvent sureties in the like amount.
- (iii) The applicant shall not leave the Cities of Mumbai, Thane

and Palghar without the prior permission of the Court.

(iv) The applicant shall hand over his passport to the Investigating Officer.

Application stands disposed of.

(SMT. SADHANA S.JADHAV, J.)