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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1908 OF 2017

Vijay Gangaram Raskar

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Sanjeev Kadam i/b Sandeep Shinde and Vishwajeet Mohite for Applicant.

Mr. S.H. Yadav, APP for State.

Mr. P.K. Borade, P.S.I., Ozar Police Station, Nashik (rural) present.

CORAM : A.S.GADKARI, J.

DATE : 3rd NOVEMBER 2017

P.C.:

1] The applicant is apprehending arrest in CR No. 138 of 2017 dated 18.10.2017 registered with Ozar Police Station, District- Nashik under Sections 306, 506 read with 34 of the Indian Penal Code.

2] Heard the learned Counsel for the applicant and the learned APP. Perused the record and papers of investigation.

3] The first information report is lodged by Smt. Mina K. Shete, wife of Shri Kedu B. Shete (deceased). It is the prosecution case that, the deceased and his mother sold their agricultural land to the applicant and his brother Santosh Raskar in the year 2007 and had received

consideration for the same. That at the time of sale of the said land, deceased had requested applicant and his brother Santosh Raskar to give him 2 ares of land for constructing his house. The applicant had told Kedu Shete (deceased) that he will construct a building thereon and constructed a building on the said plot of land in the year 2012. That deceased paid a sum of Rs.9,50,000/- for purchase of a flat in the said building and received possession of the same. It is the further case of prosecution that the applicant and his brother Santosh Raskar did not execute the conveyance/sale deed in respect of the said flat in favour of deceased Kedu Shete and whenever deceased requested for transfer of flat in his name, they dodged the same by giving evasive replies. It is the prosecution case that, few days prior to 18.10.2017 the deceased was seen to be under tremendous mental pressure and being asked he told to his wife that the applicant and his brother Santosh Raskar are demanding market value of the said flat or for vacating the said premises and had threatened that, failing which the deceased would face dire-consequences. It is alleged that, on 18.10.2017 and at about 6.30.am, the deceased committed suicide by jumping from the building in which he was residing. It is categorically stated in the first information report that the first informant along with

other residents of the building immediately rushed to the spot and took deceased to the hospital. On the way to the hospital, deceased informed his wife that due to constant harassment and threats by the applicant and his brother Santosh Raskar, he jumped from the said building. Deceased succumbed to injuries at about 10.45 a.m on the said date. In the premise the first information report is lodged.

4] Learned Counsel for the applicant submitted that the applicant and his brother Santosh Raskar have executed conveyance deed in favour of other residents of the respective flats and the said flat-purchasers have not made any grievance about the same. He submitted that deceased jumped from 4th floor of the building and in such a case, there is no possibility or probability that, the deceased may be in a mental or physical condition to speak to narrate the reason for his committing of suicide to his wife while being taken to the hospital. He submitted that, in the first information report it is stated that blood was oozing from the mouth of deceased and he had suffered injuries to his head and therefore he was not in a condition to give such a statement to his wife. He submitted that the act of instigation to commit suicide cannot be inferred from the statement of the first informant and therefore Section 306 of the Indian Penal Code

cannot be applied to the applicant. He further submitted that the applicant is ready and willing to co-operate with the Investigating Agency and his custodial interrogation may be avoided and prayed to grant pre-arrest bail to the applicant.

5] Per contra, the learned APP vehemently opposed the application for pre-arrest bail and produced the record of investigation for perusal. Learned APP submitted that the applicant and his brother Santosh Raskar were constantly threatening the deceased for vacating the said flat and they also administered threats of dire-consequences to the deceased prior to committal of suicide. He submitted that it is due to the constant harassment and threats at the behest of the applicant and his brother, deceased jumped from the building and committed suicide and for the effective investigation of the crime, the custodial interrogation of the applicant is necessary. He submitted that the present application may be rejected.

6] As far as the contention of the learned Counsel for the applicant that, the deceased was not in a mental or physical condition to give his statement to his wife thereby implicating the applicant and his brother as instigators of the crime is concerned, PM notes of deceased clearly indicate that there was fracture at right 8th to 10th rib laterally. However, the said

notes are silent about any injury to the head. The Medical Officer, Primary Health Centre, Niphad has given his opinion about cause of death as “due to haemorrhagic shock from internal bleeding from injuries mentioned above”. Thus prima facie it appears that the injury which was fatal and due to which death of deceased occurred was due to fracture of ribs and other related injuries and further it appears that there is no head injury. Thus it appears from the medical record that the deceased was in a position of making statement to his wife. Investigation carried out till date clearly indicates that, the witnesses rushed to the scene of offence after hearing the sound of falling somebody and have categorically stated that when they reached the spot, Kedu Shete (deceased) was writhing in pains. The witnesses have prima facie corroborated the version of the first informant in all aspects. It is to be noted here that, the statement given by the deceased to his wife i.e. first informant that, it is due to the constant harassment and threats by the applicant and his brother, he has jumped from the 4th floor of building, squarely falls within the purview of Section 32 of Evidence Act and therefore attracts Section 306 of Indian Penal Code. It further appears from the medical record that, the deceased was in a position of making the said statement to his wife.

It is to be noted here that, due to the constant harassment and threats by the applicant and his brother Santosh, the deceased was left with no other alternative than to put an end to his life and under that mental pressure and agony, jumped from the 4th floor of the building and the said act squarely falls within the preview of Section 306 of the Indian Penal Code.

7] After taking into consideration the serious allegations against the applicant and gravity of the offence, this Court is of the view that the applicant cannot be protected by way of pre-arrest bail and for further investigation of the crime, the custodial interrogation of the applicant is necessary.

8] At this stage, Shri Kadam, the learned Counsel appearing for the applicant submitted that the effect and implementation of the present Order may be stayed for a period of 4 weeks from today to enable the applicant to approach the Apex Court.

However, for the reasons stated hereinabove and in view of the gravity of the offence, the said prayer is rejected.

(A.S.GADKARI, J.)