

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.777 OF 2016

Suresh s/o Yadavrao Yerawar

..VS..

The State of Maharashtra, thr. Police Station Officer, Lohara, Tahsil and District
Yavatmal

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

Court's or Judge's Order

Shri M.P. Khajanchi, Counsel for the applicant.
Shri S.D. Sirpurkar, Addl.P.P. for the non-applicant.

CORAM : P.N. DESHMUKH, J.
DATED : MARCH 1, 2017.

This application is filed for bail by accused in Crime No.92 of 0216 registered for the offences punishable under Sections 306 and 506 read with Section 34 of the Indian Penal Code and Sections 3(1)(x) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989.

Heard learned counsel for the applicant and learned Additional Public Prosecutor.

Record reveals that applicant was initially protected by *interim* orders of this dated 28.11.2016 and has admittedly attended investigating officer as per directions issued earlier. It is material to note that incident of deceased committing suicide by jumping into

well on 28.10.2016 of which report came to be lodged by his father Ramkrushna Dhale on 8.11.2016 involving applicant as a person who has extended threats to deceased on 25.10.2016. Considering the fact that alleged threats are extended by applicant on 25.10.2016 due to which deceased is stated to have committed suicide on 28.10.2016, applicant is liable to be released on bail as even otherwise his involvement is based on belated F.I.R. lodged on 8.11.2016.

Law on the point of abetment to commit suicide is by now well settled. The concept of abetment in the context of abetment of suicide, which is punishable under Section 306 of the Indian Penal Code, is discussed by the Apex Court in the case of Sanju @ Sanjay Singh Sengar ..vs.. State of Madhya Pradesh, (2002 Cr.L.J.2796). While allowing the said appeal, Their Lordships of the Supreme Court, inter alia, observed as follows :

“Even if we accept the prosecution story that the appellant did tell the deceased ‘to go and die’, that itself does not constitute the ingredient of ‘instigation’. The word ‘instigate’ denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.” (Para 13 of the reported Judgment).”

In the light of above facts and settled legal position, it is noted that even if a person would commit suicide because of certain acts of the accused, the accused cannot be said to have committed abetment of suicide by the deceased unless the accused would intend, while causing such acts to the victim, that he/she should commit suicide. As such, it is necessary for the prosecution to establish that by his acts, the accused could reasonably foresee that because of his conduct, the victim was almost certain or at least, quite likely to commit suicide. Unless this is established, a person cannot be charged of having abetted commission of suicide, even if, suicide has been committed as a result of some of the acts committed by the accused.

In the case of Sanju (supra), it is seen that even in the case where the accused had uttered words such as “go and die” in abusive and humiliating language which, allegedly, led to committing of suicide, it was held that it would not amount to instigation and consequently, there would be no offence of abetment of suicide.

Having considered legal position as aforesaid and facts in the present application, the same is liable to be allowed. Hence, the following order:

Order dated 28.11.2016 stands confirmed on the same terms and conditions. However, applicant

is further directed to attend investigating officer as and when called, till filing of the charge-sheet.

JUDGE

!! BRW !!

C E R T I F I C A T E

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

**Uploaded by : Bhushan R.Wankhede.
(Personal Assistant)**

Uploaded on :- 3/3/2017

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