

IN THE HIGH COURT OF BOMBAY AT GOA

Criminal Application (Bail) Nos.46/2018 and 47/2018

Criminal Application (Bail) No.46/2018

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| (1) | Milan Vishnu Aroskar D/o Vishnu Aroskar | |
| (2) | Prafula Vishnu Aroskar w/o Sadesh Satardekar | |
| (3) | Manju Vishnu Aroskar
w/o Gurudhas Kakodkar | Applicants. |

Versus

State of Goa and others	Respondents
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Criminal Application (Bail) No.47/2018

Ms. Somolibai Aroskar, D/o Vishnu Aroskar	Applicant.
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Versus

State of Goa and others	Respondents
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Mr. Arun De Sa, Advocate for the applicants/petitioners.
 Mr. S.R.Rivankar, Public Prosecutor for the respondents.
 Mr. Ryan Menezes, Advocate for the Intervenor.

CORAM : PRITHVIRAJ K.CHAVAN, J.
ORDER RESERVED ON :21/02/2018.
ORDER PRONOUNCED ON :28/02/2018.

ORDER:

- The petitioner-applicant no.1 in CRMAB No.46/2018 and the petitioner-applicant in CRMAB No.47/2018 are the real sisters. Petitioner Nos.2 and 3 are their relatives. Ms. Somolibai Aroskar is the widow of deceased Savio Flaviano

Avinash De Melo, who, admittedly committed suicide by hanging on 23.12.2017 at his house situated at Benaulim. Admittedly, the petitioner Somolibai was not with the deceased at the time of his suicidal death. The deceased and the petitioner were believers of Christians attached to the Khush Khabri Kalishiya Church. They fell in love of each other and got married in the year 2017. After the marriage, they started residing at House No.205 Cacana moddi, Cuncolim, Salcete, Goa. It is stated that after their marriage, the deceased informed his wife that since long he had been suffering from AIDS and was under medication. The deceased used to demand unprotected sex from the petitioner, however, she used to refuse as she was afraid of getting infected by the said disease. The petitioner was subjected to sexual violence by the deceased despite her objections.

2. It is also stated that the deceased was a troubled individual who was alcoholic, unemployed and also mentally stressed and disturbed on account of being diagnosed with AIDS. There was opposition from family for having converted into a believer Christian and also the husband's family were objecting for the marriage because the petitioner belongs lower caste. Sister of the deceased namely Sairah was instrumental in instigating the deceased for harassment. The

deceased was depressed due to taunts from his sisters for marrying the petitioner, who is not a Roman Catholic and belongs to an inferior class.

3. It is also stated by the petitioner Somolibai that she was subjected to assault with slaps and fist blows by the deceased. He used to catch and press her neck.

4. On 18.12.2017 the petitioner Somolibai visited her bedridden mother at Margao, who took seriously ill and, therefore, decided to stay with her mother. The deceased had dropped her. It is stated that on 19.12.2017 the deceased again visited the petitioner's mother house and assaulted her due to which she was admitted in Hospicio Hospital, Margao on 20.12.2017 and was discharged on 21.12.2017. The petitioner Somolibai, therefore, lodged NC Complaint No. 921 on 21.12.2017 at Margao Police Station.

5. It is also the contention of the learned counsel for the petitioner that, in fact, the petitioner was the victim, who was deceived and cheated by the deceased by not disclosing before the marriage that he was suffering from AIDS. Even otherwise, there is no question of abetment as per Section 107 of Indian Penal Code by the petitioner Somolibai for the

suicidal death of her husband. The so-called suicide note is yet to be proved in the handwriting of the deceased. He submits that there may be some matrimonial dispute but there is no live-link between the act of suicide and that of the petitioners. From the past conduct of the deceased itself, it is clear that he had been ill-treating the petitioner Somolibai. The learned counsel, therefore, prayed for protection of the petitioners being ladies and that there is no question of influencing any of the prosecution witnesses as they belonged to poor social strata. It is also submitted that custodial interrogation is not at all required and it would be only harassment to the petitioners by the Investigating Agency.

6. The learned Public Prosecutor, however, has opposed the application mainly on the ground that there is a clear mention in the suicide note that the deceased committed suicide because of the harassment meted out to him by all the petitioners. The learned Public Prosecutor, therefore, tried to justify custodial interrogation of the petitioners and also submits that there is likelihood of tampering with the evidence by the petitioners, in case of their release on bail.

7. Mr. Menezes, learned counsel, as an Intervenor stressed that only the interrogation of the petitioners will bring

out the truth and it would not be any harassment to them. He drew my attention to a complaint filed by the sister of the deceased with the Police Station, Colva on 26.12.2017 indicating as to how the deceased was physically and mentally tortured, emotionally blackmailed, physically assaulted for money and property by the wife of deceased due to which he was forced to take drastic step of committing suicide.

8. The petitioners in CRMAB No.46/2018 and the widow of the deceased are booked by the respondents for an offence punishable under Section 306 read with 34 of IPC. In order to attract the ingredient of Section 107 of IPC, there has to be an instigation to any person to do that thing; or there must be an act or illegal omission as contemplated in the second proviso of Section 107 of IPC, which takes place in pursuance of the conspiracy, and thirdly, there should be an intentionally aiding, by any illegal act or illegal omission, in doing of that thing. Prima facie, there is absolutely nothing on record from which any of these ingredients, can be said to have been attracted except the complaint of the first informant, who is the sister of the deceased, who filed a complaint against the petitioners only after a complaint filed by the petitioner Somolibai herself with the Police on 26.12.2017. A bare look at the complaint lodged by the petitioner Somolibai with the

Police clearly indicates that prima facie, she was not involved in abetting the suicide of her husband. It transpires from the record that the petitioner Somolibai was subjected to physical and mental cruelty by the deceased before committing suicide. The widow of the petitioner had lodged NC complaint with Margao Police on 21.12.2017, wherein she alleged that her husband assaulted her with kicks on stomach and by banging her head on the wall. The said NC case is registered as No.921/2017 under Section 323 of IPC. There is a medical certificate issued by the Government Hospital indicating the injuries suffered by the petitioner widow due to assault by her husband. After the death of her husband, the petitioner had lodged a written complaint dated 26.12.2017. It would be pertinent to indicate para 3 to 14, which reads thus:

- “3. I say that, my husband was unemployed/alcoholic, and ill in health.*
- 4. My husband himself had told me, that in the past he used to assault his mother and that his sister/family members used to admit/take him in the mental hospital for medical treatment.*
- 5. That the sister of my husband by the name of Saira is not in good terms with me and is interested to grab my husband's properties, she has been instigating my husband to trouble me.*
- 6. My husband informed me, that he has debts and that he has to pay about 14 lakhs to some person.*
- 7. Since my old aged mother is sick I used to take care of my mother in Margao and sometimes stay with her.*
- 8. I say that, on 18th December 2017 my husband dropped me at my mother's house.*
- 9. I say that, on 24th December 2017 I went from my mothers house for a religious ceremony of the Christmas season, where I got to know from a Lady and a Pastor that my husband has died t his*

Benaulim house. So I along with my family members went at the house and found it locked. Therefore I went to inquire with his sister Saira in the neighbourhood about my husband. She refused to tell me and told me not to come at her flat. At that time there was a man by the name of Pradeep Naik along with her in her flat who told my said sister in Law the said Saira to phone the Police and get the arrested.

10. *Then I went to Margao Police Station to inquire about my husband's death. They told me to go to Colva Police Station to find out, then when I went to the Colva Police Station they told me that they have registered a case of the death of my husband who was found hanging at his house at Benaulim, and that his body is kept at the morgue at Margao for conducting Post mortem, I say that it is only at this time that I got to know properly that my husband has really died. Then I went to the Cuncolim Police Station to inform about the same.*

11. *I say that, my matrimonial home is at the address as is given above, but my husband also has another house in Benaulim and his sister Saira resides at a different flat in the neighbourhood of my husband's house.*

12. *I pray that the keys of my husband's flat in Cuncolim bearing H.no.205, which were in my husbands possession be handed over to me.*

13. *I pray that after completion of the formalities the House in Benaulim which belongs to my husband be opened in my presence and conduct an inventory to list of all the items/assets therein and the house handed over to me.*

14. *I pray that the cause of my husband's death may be investigated properly."*

9. It is apparent, at this stage, that the widow Somolibai herself want an investigation into the cause of death of her husband. It is submitted by the learned counsel for the petitioners that the petitioners are co-operating with the Investigating Agency and, therefore, there is no question of their abscondance, as they have roots in the society.

10. Another important aspect is that the respondents have not tendered any material to show that the alleged suicide note is in the handwriting of the deceased himself especially when the petitioner Somolibai has denied it to be the handwriting of the deceased. That will have to be investigated and, therefore, prima facie, it cannot be said to be a suicide note of the deceased himself only because it was found near his body. There is no specific seizure panchanama drawn by the Investigating Officer. Prima facie, there is no live- link shown to have existed between the act of suicide and role of the petitioners or any nexus between the two. Rather, after assaulting his wife, the deceased alone went to his house in Benaulim where he committed suicide. To constitute abetment, the intention and involvement of all the petitioners to aid or instigate the commission of suicide by the deceased is imperative, which is absolutely not there. The learned counsel for the petitioners, therefore, rightly placed reliance in case of **Gurcharan Singh Vs. State of Punjab : (2017) 1 SCC 433**, wherein it is held by the Hon'ble Supreme Court in para 21, which reads thus:

“21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or

instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide”.

11. In case of **Padmakar Tukaram Bhavnagare and Anr.Vs. The State of Maharashtra and Anr.(2013 ALL SCR 324**, the Hon'ble Supreme Court while entertaining an application under Section 438 of the Code of Criminal Procedure held thus:

“7. At this stage, we do not want to express any final opinion on the merits of the case. Truth will surface only when the evidence is adduced. Prima facie, however, we find it difficult to comprehend why the alleged causes of suicide are not stated in one suicide note. So far as accused 5, 6 and 7 are concerned contents of the suicide notes prima facie appear to be unnatural. There is no reference to them in the FIR. Assuming, the suicide notes to be genuine, we find it prima facie difficult to believe that accused 6 and 7 would threaten their son-in-law that they would ask their daughter to set herself on fire and then lodge a complaint against him, particularly, when admittedly at the relevant time their daughter was pregnant.

9. *Facts of that case cannot be compared to the facts of the instant case. The present accused who are aged and rustic are not influential persons holding high office who can bring pressure on the investigating agency. It is unlikely that the police would find it difficult to interrogate them because they are protected by an order granting anticipatory bail to them. We are unable to concur with learned Single Judge in the facts of this case that it would not be possible to investigate allegation regarding theft of gold ornaments because of the anticipatory bail order. Learned Single Judge was,*

however, rightly concerned about the fact that the Public Prosecutor was not heard before passing the orders. We have, therefore, heard learned counsel for the State at length. He has vehemently supported the impugned orders but he is unable to persuade us to confirm them. No concert material has been produced before us to show that the accused had interfered with the course of investigation by threatening the complainant and the members of his family. It is true that this Court has held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of justice or abuse of the concession granted to the accused in any manner. This Court has clarified that these instances are illustrative and bail can be cancelled where the order of bail is perverse because it is passed ignoring evidence on record or taking into consideration irrelevant material. Such vulnerable bail order must be quashed in the interest of justice. (See: Dolat Ram V. State of Haryana, (1995) 1 SCC 349 & Dinesh M.N.(S.P.) V. State of Gujarat, (2008) 5 SCC 66 : [2008 ALL MR(Cri) 1988 (S.C.)]. No such case, however, was made out to persuade learned Single Judge to quash the anticipatory bail order passed in favour of accused 6 and 7. Order granting anticipatory bail to them, therefore, deserves to be confirmed. We feel that if the conditions imposed by learned Sessions Judge are confirmed, it would be possible for the investigating to interrogate the accused effectively”.

The ratio would cover the field.

12. It cannot be lost sight of the fact that the deceased, as stated by his widow - Somolibai was suffering from AIDS and, therefore, keeping in mind the said fact, which has not been disclosed by his sister, as the first informant, in her complaint, prima facie, the story of the prosecution that the petitioners instigated the deceased to commit suicide does not appear to be probable. The petitioners, by intimation

dated 19.2.2018 to the respondents, expressed their willingness and co-operation as well as assistance to investigate the circumstances, which led to the unnatural death of the deceased. This conduct on the part of the petitioners speaks volume that neither they intend to abscond nor would make any attempt to influence the investigation or the witnesses. Most of the petitioners being ladies from the lower strata of the society perhaps, would not dare to influence the investigation or the prosecution evidence.

13. In the light of letter dated 9.2.2018 as well as the petitioners' complaint to the police dated 26.12.2017 as referred hereinabove, liberty of individual is also of utmost importance, which needs to be protected and there should not be needless harassment by the police under the garb of custodial interrogation in the peculiar facts and circumstances of this case.

14. For the reasons stated hereinabove, the petitioners are entitled to be released on bail, in the event of their arrest in the aforesaid crime by the respondents. As such, the following order is passed:-

Order

(i) Criminal Application (Bail) Nos.46/2018 and 47/2018 are allowed.

(ii) In the event of their arrest in Crime No.129/2017 for offence punishable under Section 306 read with Section 34 of IPC, each of the petitioner be released on furnishing a PR bond in the sum of Rs.20,000/- with one solvent surety each in the like amount.

(iii) The petitioners shall co-operate with the Investigating Agency as and when required.

(iv) The petitioners shall not make any attempt to induce, threat or promise any of the prosecution witnesses or any person acquainted with the facts of the case.

(v) The petitioners shall not leave the State of Goa, without seeking prior permission of the concerned Court.

15. The petitions stand disposed of accordingly.

PRITHVIRAJ K.CHAVAN, J.

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