

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 1297 OF 2018**

Santosh Narayan Basude

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Ritesh Thobde for the Applicant.

Mr. N.B. Patil APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 29th NOVEMBER, 2018.

P.C.:-

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in C.R. No. 256 of 2018 dated 21st May, 2018 registered with Jail Road, Police Station, District Solapur City under Sections 3384, 386, 306 read with Section 34 of the Indian Penal Code and under Sections 39, 41 and 45 of the Money Lending Act.

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the record of investigation.

3 By an Order dated 4th July, 2018, the Applicant was granted interim relief and was directed to report to the concerned Police Station on stipulated dates, to co-operate in the process of

investigation.

4. The first information report is lodged by Smt. Renuka Kalyan Padal, wife of deceased Kalyan Padal. The case of the prosecution in brief is that, the said Kalyan Padal was suffering from Stomach Cancer and jaundice. As he was unable to meet with the expenses of the medical treatment, he had taken Rs.1,00,000/- each from Mr. Shrinivas Sanga and the present Applicant. That, Mr. Shrinivas Sanga and the present Applicant were demanding the said amount along with compound interest and as the informant was unable to pay the said amount immediately, they threatened him of dire consequences including a threat to assault to the family members and cause irreparable harm to their reputation. It is further stated that, a Shop Gala owned by the deceased was got transferred by the Applicant and Mr. Shrinivas Sanga from the deceased by allegedly executing a sale-deed.

On 16th May, 2018, the deceased was found to be depressed and upon inquiry he informed that, the Applicant and other accused persons have threatened him of dire consequences, if he fails to repay the amounts taken on loan. That, prior to 5.00 a.m. of 17th May, 2018 when the family members of Kalyan Padal were fast asleep,

it is alleged that, he committed suicide by hanging himself at his residential premises.

5 The learned counsel appearing for the Applicant submitted that, the deceased Kalyan Padal was suffering from cancer and there was every possibility that, due to the medication of the said ailment, there may be a tendency to commit suicide to get relief from the pains permanently. He further submitted that, there is no abetment at the instance of the Applicant to the deceased to commit suicide. He further submitted that, demanding one's own money back would not attract Section 384 of the Indian Penal Code. He further submitted that, the deceased on 16th May, 2018 while taking dinner, had told the informant that, hereinafter nobody will demand money and nobody come to our house, which shows that due to the depression he had decided to commit suicide. He therefore, submitted that the custodial interrogation of the Applicant is not necessary and the Applicant may be protected by pre- arrest bail.

6 The learned APP, on instructions, from the Investigating Officer submitted that, though the Applicant attended him on stipulated dates, did not co-operate in the process of investigation *inter-alia* the Applicant has not even produced the copy of the alleged

sale-deed of the Shop Gala belonging to the deceased. He further submitted that, the co-accused Shrinivas Sanga is a habitual offender. He has been arrested and thoroughly interrogated by the Investigating Officer and during his custodial interrogation, he revealed that the sale deed of the said Shop Gala is in the possession of the Applicant.

7 The record indicates that, the deceased Mr. Kalyan Padal, on 15th May, 2018 i.e. just 2 days prior to his death, had made a representation to the Commissioner of Police, Solapur and in the said communication, apart from narrating all the facts, including the fact of harassment at the behest of the Applicant and the co-accused, he had also expressed his intention to commit suicide. He has categorically stated that, the Applicant and co-accused were continuously abusing him in filthy language and are threatening to cause dire consequences to his wife and children and therefore, if appropriate action is not taken in a reasonable period, he may commit suicide. As noted earlier, the deceased committed suicide prior to 5.00 a.m. of 17th May, 2018. It prima facie appears that the said representation dated 15.5.2018 would fall within the purview of Section 32 of the Evidence Act.

8 The record of investigation, *prima facie*, indicates that, it is

due to the constant harassment, threats and demands of money by the Applicant and the co-accused Mr. Shrinivas Sanga, the deceased was left with no other alternative but to take an extreme step in his life i.e. to commit suicide and accordingly he did it.

9 After perusing the entire record of investigation, it *prima facie*, indicates the clear complexity of the Applicant in the present crime. As noted earlier, the police are yet to recover the said sale deed of the Shop Gala forcefully executed by the Applicant and the co-accused from the deceased.

10 In view of the above, and after taking into consideration, the gravity of the offence and the serious allegations against the Applicant, this Court is of the considered view that the Applicant does not deserve to be protected by pre-arrest bail.

11 Application is accordingly rejected.

12 It is needless to mention that, the observations made herein-above are in the context of deciding the present Application and the Trial Court at the time of hearing the regular bail Application and/or conducting the Trial, may not get influenced by the same.

(A.S. GADKARI, J.)