

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 2460 OF 2018**

Vaijinath Nagnath Gavali (Bhosale)

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Ms. Anjali Patil a/w Mr. Arun Rajput for the Applicant.

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

CORAM : A. S. GADKARI, J.

DATE : 30th 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. 780 of 2018 dated 12th November, 2018 registered with Solapur Police Station, District Solapur under Section 306 read with Section 34 of the Indian Penal Code.

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

3 The first information report is lodged by Shri Dipak A. Pawar, the brother of Sarang Pawar (deceased). It is stated that, on 10th November, 2018, he received the information that his brother

Sarang had consumed poisonous substance and was lying unconscious in the fields of Mr. Kashinath Khandke. Sarang Pawar was thereafter admitted to the hospital. On 11th November, 2018, Sarang Pawar gain consciousness and told the informant in presence of Mahadev Gavali that, on 9th November, 2018, at about 10.00 p.m. when he had been at Vijayraj Orchestra Bar, at that time the Applicant along with 3 to 4 persons assaulted him and due to the humiliation and insult suffered by him, he consumed poisonous substance in the fields of Mr. Kashinath Khandke. Sarang Pawar expired on 12th November, 2018 at about 1.15 p.m. in Civil Hospital, Solapur. In the premise, the first information report is lodged on 12th November, 2018.

4 The learned counsel for the Applicant submitted that, the allegation of assault by 3 to 4 persons on Sarang Pawar is not substantiated by the postmortem notes. The postmortem notes are silent of any injury, suffered by Sarang Pawar. She further submitted that, the Applicant is not instrumental in abetting the death of Sarang Pawar. She submitted that, Sarang Pawar had taken hand loan from various persons from the village and was unable to repay it and the said persons who had advanced loan to Sarang Pawar were following him for repayment of loan. She submitted that might be the reason

for Sarang Pawar to commit suicide. She submitted that there are no witnesses to the alleged assault, either by the Applicant or other persons to Sarang Pawar on 9th November, 2018. She further submitted that, the custodial interrogation of the Applicant is not necessary for investigation of the present crime. She, therefore, prayed that the Applicant may be protected by pre-arrest bail.

5 I have perused the record of investigation. The record of investigation indicates that, there are more than two witnesses who have stated that after the deceased Sarang Pawar committed mischief in the said Orchestra Bar, the Applicant and other co-owner asked him to come out of the said bar and restaurant and when the deceased started questioning them about the said act, 3 to 4 persons including the Applicant, assaulted him. At that time, Sarang Pawar threatened the Applicant that, this is the second time, he is being assaulted at the said bar and he will lodge a complaint with the Collector for running the said bar after midnight. The deceased thereafter, left the said place.

It appears from the record that, two other co-accused namely Dnyaneshwar Powale and Santosh Kamble have been arrested by the police and during their custodial interrogation, the role played

by the Applicant has further been revealed by the Police. The record indicates that, after the said assault in the bar by the Applicant and other accused persons, the deceased Sarang Pawar felt humiliated and insulted, went into depression and immediately on 10th November, 2018, he consumed poisonous substance in the fields of Mr. Kashinath Khandke.

On 11th November, 2018 when Sarang Pawar got consciousness at hospital, he has stated to the informant that, the Applicant along with 3 to 4 persons assaulted him on 9th November, 2018 after 10.00 pm. The fact of assault is corroborated by other more than two eye witnesses. The statement of deceased Sarang Pawar given to his brother in hospital, *prima facie*, would fall within the purview of Section 32 of the Indian Evidence Act. It clearly shows the complexity of the Applicant in the present crime. It is only because of the assault by the Applicant, the deceased got humiliated and insulted and therefore, decided to take extreme step in his life to commit suicide. It thus, *prima facie*, appears that, the Applicant abetted the cause of death of Sarang Pawar.

7 In view of the above and after taking into consideration the gravity of the offence and 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.

6 Application is accordingly rejected.

(A.S. GADKARI, J.)