

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 225 OF 2018

Rakhi Makhanlal Patra ...Applicant.

vs.

The State of Maharashtra ...Respondent.

Mr. Samir A.Vaidya for the Applicant.

Mr.J.S.Lohokare, APP. for the State.

Mr. B.G.Tangsali for Respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 17th July, 2018

P.C.

1. The applicant was granted interim relief by an Order dated 6.2.2018 on the ground that the Investigating Officer was not present to give instructions to the learned APP. on that date.

2. Heard Shri. Vaidya, learned counsel appearing for the applicant, Mr. Tangsali, learned counsel appearing for Respondent No.2 and the learned APP. Perused the record of investigation.

3. The name of the deceased is Mr. Honey. The date and time of incident is 21.5.2017 prior to 9.35p.m. The first information report is lodged by Mr. Naresh Aswani father of deceased Mr. Honey.

4. The prosecution case in brief is that, the deceased Mr. Honey was having love affair with the applicant for about 6 to 7 years prior

to the date of incident. Subsequently their relations got sour and they mutually decided to part ways. Both of them thereafter decided to marry with different partners and accordingly their marriages were fixed. That, on 21.5.2017 between 11.00 a.m. and 4.00 p.m. the applicant and deceased were together in a hotel by name Red Chilli at Kalyan and in the same night Mr. Honey committed suicide by hanging at his residential premises. On 23.5.2017, the brother of the informant namely Mr. Nand enquired about the said incident with the applicant, upon which, she told that on 21.5.2017 she along with Mr. Honey were together upto 4.00p.m. and in the same night Mr. Honey gave her a video call on her mobile phone and informed that, he was going to commit suicide by hanging. He also showed her the knot tied to the fan, to which the applicant told Mr. Honey, to show her, that he can hang himself and thereafter Mr. Honey committed suicide. It is the further prosecution case that the applicant used to harass Mr. Honey for money and also used to threatened him if he does not pay money he will be defamed. It is the prosecution case that since the break up of relations of Mr. Honey with the applicant he was continuously under depression. It is alleged that the applicant has instigated and abetted Mr. Honey to

commit suicide.

5. Mr. Vaidya, the learned counsel for the applicant submitted that, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on part of accused to instigate or aid in committing suicide, Section 306 of the Indian Penal Code cannot be attracted. In support of his contention he relied on the decision of the Supreme Court in the case of Gangula Mohan Reddy vs. State of Andhara Pradesh reported in (2010) 1 SCC 750. He submitted that the applicant and deceased were having love affair for many years and subsequently they mutually decided to part with their ways and therefore, there was no question of abetting suicide by the applicant. He further submitted that even if the first information report is taken at its face value then also no offence under Section 306 can be said to have been made out against the applicant. He therefore, prayed that the applicant may be granted pre-arrest bail.

6. A perusal of the first information report and the record of investigation would clearly indicate that, on the date and time of the incident when the deceased Mr. Honey gave a video call to the applicant and expressed his desire to commit suicide the applicant

instead of dissuading Mr. Honey from committing the said act, laughed at him and in fact instigated him by saying that he should bring the said threat in reality. It appears that the said sarcastic laugh of the applicant along with her instigation to the deceased Mr. Honey to bring his alleged threat into reality has ultimately resulted in the loss of life of Mr. Honey. In view of this Court the said instigation and/or abetment of the applicant ultimately resulted into Mr. Honey committing suicide by hanging. If the applicant was not having any intention in abetting and/or instigating the deceased to commit suicide, as a person of common prudence she would have certainly made an attempt to dissuade the deceased from committing the said act. Thus, prima facie it is clear that the applicant has instigated and abetted the deceased to commit suicide.

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

8. Application is accordingly rejected.

(A.S.GADKARI, J.)