

Sarnobat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.456 OF 2018

Akshay Tukaram Ambhore and another .. Applicants.
Vs.
The State of Maharashtra .. Respondent.

ALONGWITH

ANTICIPATORY BAIL APPLICATION NO.462 OF 2018

Netaji Gorakh Atole .. Applicant.
Vs.
The State of Maharashtra .. Respondent.

ALONGWITH

ANTICIPATORY BAIL APPLICATION NO.463 OF 2018

Kalpesh Ramchandra Chaudhari .. Applicant.
Vs.
The State of Maharashtra .. Respondent.

Mr.Sachin S. Deshmukh for the applicant in ABA No.456 of 2018.
Ms.Avanti Inamdar for the applicant in ABA No.462 of 2018 and 463 of 2018.
Mr.Swapnil Patil for the Intervenor.
Ms.Veera Shinde, APP in ABA No.456 of 2018.
Mr. Vinod Chate, APP in ABA No.462 of 2018 and 463 of 2018.
Mr.Sachin Sadaphule, I.O., Adgaon Police Station.

CORAM : P. N. DESHMUKH, J.

DATE : 16TH MARCH, 2018.

P. C. :

1. Issue notice to the respondent. Learned Additional Public

Prosecutor waives notice for respondent/State. Learned counsel for original accused waives notice for said respondent.

2. This application was filed by original complainant for intervention, on the ground mentioned in the application. Same is allowed. Applicant is accordingly allowed to assist the prosecution.

3. All these applications are arising out of same Crime No. 289/2017 registered with Adgaon Police Station, District Nashik for the offence under Section 306 r/w 34 of Indian Penal Code, same are decided together. Heard learned counsel for the applicants, learned APP and learned counsel for intervenor-original complainant.

4. Counsel for applicants have jointly submitted that all the applicants are students prosecuting their studies for 4th year in Agriculture College and in support of same has placed on record bonafide certificates of applicants where from said aspect is substantiated, which fact even otherwise is not disputed as even according to the case of prosecution, applicants along with deceased as a student of college prosecuting B.Sc. Agriculture course were residing with him in room at the time of incident. It is further submitted that incident took place on 18th December, 2017 on which date deceased Shubham Patil, committed suicide by hanging in the room of which, report is lodged three days thereafter on 21st December, 2017 by his father naming all the applicants and one Rohan Rathod as the

persons, responsible for the death of deceased. Learned counsel for applicants however, by reading the contents of report has pointed out that from said document there is nothing to establish that, immediately prior to deceased committing suicide there was instigation from any of the applicants or had abetted commission of suicide. It is therefore, prayed that since in the absence of such specific mention in the report, applications be allowed as applicants were protected by interim order by the Trial Court during which period they have attended the Investigating Officer and thereafter, were protected by the interim orders by this Court from 9th March, 2018. One of the ground on behalf of applicants further submitted is that, their final examination schedule is already fixed and accordingly as the applicants are required to appear for their practical examinations from 9th April, 2018 to 23rd April, 2018 and for written examination from 25th April, 2018 to 10th May, 2018 which are to be held in their college namely K. K. Wagh College of Agriculture in Nashik. Learned counsel prayed for bail by imposing conditions as investigation is in progress.

5. Learned APP opposed the applications contending that the report it self clearly established that deceased Shubham committed suicide only because the ill-treatment provided to him by the accused and by further referring to the suicide note had submitted that this document also directly implicate all the applicants and has therefore,

contended that applications are liable to be rejected.

6. In the back ground of submissions advanced as aforesaid, on perusal of report it reveals that same is lodged on 21st December, 2017 after the incident by father of the deceased stating therein that deceased was studying in a college at Nashik since 2015-16 and since 2016-18 i.e. the academic year in which the incident took place. He was sharing room along with present applicants and one Rohan Rathod. It is further contended that in October, 2017, deceased had come to his native place for 15 days, he had informed his mother that his room mates were troubling him and were insisting him to indulge in consumption of liquor and on his failure to act upon, extends threats to him. Except for contentions as aforesaid, report is silent about prior to deceased committed suicide on 18th January, 2017 at 7.30 am., in early hours of morning, either of the applicants have instigated or abetted the deceased for commission of suicide. Similarly, from the report it cannot be made out that after deceased informed his parents of alleged conduct of applicants, in October, 2017, any steps or complaints are lodged against the applicants by the complainant or by deceased with police or even with the college authorities. In that view of the matter, fact remains that there is no material to establish that applicants have been instigated deceased for commission of suicide.

7. Learned APP though, had referred to the suicide note, the

contention therein also refers to applicants providing ill-treatment to deceased. However, from this document also it cannot be said that immediately prior to deceased committing suicide, there was any instigation to him by the applicants. Moreover, no date is mentioned on this document and as such it cannot be said that same was reduced into writing by deceased immediately prior to his committing suicide.

8. Learned APP had also submitted that, at the time of incident applicants along with one Rohan Rathod and deceased were present in the same premises where deceased committed suicide and that statement of Rohan Rathod is yet to be recorded. It is material to note that, though name of Rohan Rathod is stated in the report along with applicants and as such he is stated as accused. On a specific query made to the learned APP as to why Rohan Rathod is not shown as accused in the FIR registered vide Crime No. 289/2017, learned APP could not satisfy the Court's query even on consulting the Investigating Officer who is present in the Court, except stating that role of applicants in above applications and Rohan Rathod is distinguishable . However, the submissions made does not stand for any reason, as general statement is made in the report about alleged ill-treatment by the room mates to deceased Shubham. Learned APP further submits that statement of Rohan Rathod is to be recorded. However, having finding his name in the report, even if his statement is

recorded, that would amount to statement of co-accused.

9. In that view of the matter and considering the fact that applicants are students and their final examinations are approaching and also considering the fact that there is no material to establish involvement of the applicants to have instigated deceased immediately prior to his commission of suicide, merely because they were sharing room with deceased at the time of incident or prior thereto, is not sufficient to reject the applications. Applications are therefore, allowed by imposing conditions as per order below;

ORDER

- (i) Interim order passed on 9th March, 2018 stands confirmed.
- (ii) Applicants shall mark their presence with Investigating Officer on each Sunday at 10.00 am. till filing of charge-sheet and shall attend Investigating Officer as and when called, till filing of charge-sheet.
- (iii) Applications stand disposed of as allowed.

[P. N. DESHMUKH , J.]