

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.445 OF 2018

1. Mangal Kashinath Dabhade
Age-52 Yrs, Occ-Housewife,

2. Trupti Kashinath Dabhade
Age-19 Yrs, Occ-Education
Both residing at Room No.1496,
Building No.44, Subhash Nagar,
Chembur, Mumbai – 400 071.

)...Appellants

Vs.

1. The State of Maharashtra {at the
instance of IO Washi Police Station}

2. Smt. Vidya Ashok Ugale,
R/o. Subhash Nagar,
Bit No.49, Room No.1886,
Chembur, Mumbai – 400 071.

)...Respondents

Mr. Tejas Hilage, Advocate for the Appellants.

Mr. S.V. Gavand, APP for the Respondent/State.

CORAM : A.M.BADAR, J.

DATED : 5th OCTOBER 2018.

ORAL JUDGMENT :

1. Despite repeated chances, respondent No.2/first informant Vidya Ugale is absent. None appears on her behalf.

2. Heard.
3. Admit.
4. Heard finally as the appeal pertains to rejection of claim of anticipatory bail by both the appellants.
5. Facts in brief are thus:-

Appellants are mother and sister of co-accused Amol Dabhade. He allegedly had love affair with Gitanjali Ugale (since deceased), who was serving as Air Hostess on the Indigo Airlines. The said Gitanjali Ugale consumed poison on 7th February 2018. Initially, she was admitted in the Municipal Hospital, Vashi, Navi Mumbai, thereafter, she was shifted to the Das Hospital, Chembur and ultimately to the Wockhardt Hospital, Navi Mumbai, where she succumbed to death at about 6.00 p.m. on 8th February 2018. After her death, respondent No.2 Vidya Ugale lodged report with Police Station, Vashi, Navi Mumbai, which has resulted in registration of the Crime No.70/2018 for the offence punishable under Section 306 of the Indian Penal Code. Subsequently, Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Atrocities Act' for the sake of brevity) came to be added to the

case diary of the crime in question.

6. Both the appellants then preferred an application for anticipatory bail, but the learned Additional Sessions Judge-1, Thane rejected that application on 5th April 2018 by holding that the same cannot be entertained in view of bar of Section 18 of the Atrocities Act.

7. Heard the learned Counsel for the appellants/accused. He argued that there is no iota of evidence regarding abetment to the deceased to commit suicide by both appellants. He further argued that Section 306 of the Indian Penal Code is not the scheduled offence under the Atrocities Act, and therefore, the bar of Section 18 of the Atrocities Act is not applicable to the case in hand.

8. The learned APP opposed the application by contending that the crime in question is serious and the deceased committed suicide because of instigation by the appellants.

9. I have carefully considered the averments so advanced and perused the case diary of the said crime. The FIR lodged itself goes to show that Gitanjali (since deceased) was in a position to talk and was in fact talking with her mother and others at least on

7th February 2018. However, her statement was not recorded in order to demonstrate the cause for indulgence in the self effacement.

10. So far as present appellants are concerned, belatedly the First Informant/respondent No.2 has stated that co-accused Amol Dabhade had taken deceased Gitanjali to the appellants and inside their house, the appellants declined proposal to marry Gitanjali with Amol on the pretext that she belongs to Chambhar caste i.e. Scheduled Caste.

11. Undisputedly, Section 306 is not the scheduled offence under the Atrocities Act. There is no material to show that the appellants/accused had committed any other offence punishable under the Atrocities Act making the bar of Section 18 thereto operative.

12. In the result, the learned trial Court erred in rejecting the application for anticipatory bail merely on the ground of bar of Section 18 of the Atrocities Act. So far as penal provisions of Section 306 of the Indian Penal Code are concerned, there is no iota of evidence to demonstrate that the appellants have instigated the deceased to commit suicide. Therefore, custodial interrogation

of the appellants is not warranted. As such the order:

- : ORDER :-

(i) The appeal is allowed.

(ii) The impugned Order dated 5th April 2018 passed by the learned Additional Sessions Judge-1, Thane in Anticipatory Bail Application No.667/2018 is quashed and set aside.

(iii) The application for anticipatory bail by the appellants is allowed.

(iv) In the event of their arrest in subject Crime No.70 of 2018 registered with Vashi Police Station, Navi Mumbai at the instance of respondent No.2 Vidya Ugale, the appellant/accused, for offence punishable under Section 3(2) (va) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellants be released on bail on their executing P.R.Bond in the sum of Rs.15,000/- each, and on furnishing surety in like amount, by each of them.

(iv) As a condition of this order, appellants/accused should not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

- (v) Appellants/accused should cooperate the Investigating Officer for investigation of the crime in question.
- (vi) The appeal stands disposed of accordingly.

(A.M.BADAR J.)