

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 1078 of 2018.

Kaikasha Naeem Pathan & Anr	..Applicants.
Vs	
State of Maharashtra	..Respondent.

Mr. Niranjan Mundargi I/by Pralhad Paranjape
for the Applicants.

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

Mr. Rupesh Kumbhar, Police Naik, Juna
Rajwada Police Station Kolhapur, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATE : 19TH SEPTEMBER, 2018

P.C:-

- 1) This application is filed under Section 438 of Criminal Procedure Code by the aforesaid applicants apprehending their arrest in C.R.No. 166 of 2018 registered at Juna Rajwada Police Station, Kolhapur for offences punishable under section 306, read with section 34 of the Indian Penal Code.
- 2) Heard Mr. Mundargi, learned counsel for the applicants and Mr. Patil, learned APP for the State. Perused the records and considered the submissions advanced by the learned counsels for the respective parties.
- 3) The aforesaid crime came to be registered pursuant to the first information report lodged by the brother of the

deceased Mohammed Naeem Abdulwahab Pathan almost after one month. The deceased was married to the applicant No.1. There was marital discord between them since 2012 and as a result the applicant No.1 had left her matrimonial home and was residing at her parental home. The first information report prima facie reveals that on 12th March, 2018 brother of the first informant Mohammed Naeem had gone to the parental home of the applicant No.1 and had requested her to come along with him. It is alleged that applicant No.1 and her parents abused and threatened said Mohammed Naeem. Applicant No.1 also refused to join her husband. It is alleged that said Mohammed thereafter poured petrol on him with an intention of setting him ablaze. It is alleged that applicant No.1 threw a matchbox towards him and told him that he could set himself ablaze. Said Mohammed thereafter set himself ablaze and he expired on 16th March, 2018 as a result of burn injuries.

4) The learned counsel for the applicants relied upon a judgment of the Hon'ble Supreme Court in **Madan Mohan Singh vs. State of Gujarat & Anr**, reported in (2010) 8 Supreme Court Cases 628, when the Apex Court has held thus:-

“In order to bring out an offence under section 306 IPC specific 'abetment' as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under section 306 IPC.”

5) In the instant case, the material on record prima facie indicates that the applicant No.1 had left her marital house because of marital discord. The deceased had himself gone to the parental house of the applicant No.1 to bring her back but she had refused to join him. Irked by the refusal of the applicant No.1, the deceased purchased petrol and poured over himself. It is alleged that in the dying declaration the deceased had stated that the applicant No.1 had thrown a matchbox at the deceased and told him to set himself on fire. The question whether the deceased, who died on the same day, was in a proper physical and mental state to give a statement, will have to be decided on merits of the case. Furthermore, prima facie, the mere utterance of words or act of throwing the matchbox at the deceased in a fit of anger and due to annoyance would not constitute instigation or amount to intentionally aiding the deceased in committing

suicide. Thus, the accusations levelled against the applicants do not prima facie constitute acts of 'abetment" within the meaning of Section 107 of IPC. Hence, in my considered view this is not a case which justifies custodial interrogation. Even otherwise the applicants are permanent residents of Kolhapur, there is no possibility of the applicants absconding or thwarting the course of justice.

6) Considering the above facts and circumstances, in my considered view, this is a fit case for grant of pre-arrest bail. Hence, the following order :-

(i) Application is allowed.

(ii) In the event of arrest of the applicants in Crime No. 166 of 2018 registered with Juna Rajwada Police Station, Kolhapur, they shall be enlarged on bail on their furnishing bail bonds of Rs. 25,000/- each with one or two sureties each in the like amount to the satisfaction of the concerned Investigating Officer.

(iii) The applicants shall report to the Investigating Officer for four days from Monday i.e. 24th September, 2018 between 11:00 a.m. to 1:00 p.m. and thereafter as and when required by the Investigating Officer.

(iv) The applicants shall furnish their permanent and temporary addresses, if any, and their contact details to the Investigation Officer.

(v) The applicants shall not change their residential address without prior intimation to the Investigation Officer.

(vi) The applicants shall not interfere with the complainant/first informant, other witnesses and shall not tamper with the evidence in any manner.

7) Application stands disposed of in the aforesaid terms.

(SMT. ANUJA PRABHUDESSAI, J.)