

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

**ANTICIPATORY BAIL APPLICATION NO.1103 OF 2018  
WITH  
APPP/694/2018**

Deepak Madhavrao Mankar ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Amit Desai, Senior Advocate with Mr.Abaad Ponda, S.P. Kadam  
i/b Shantanu R. Phanse and Shailesh Chavan for the Applicant

Ms.Pallavi Dabholkar, APP, for Respondent – State

Mr.Satyavrat Joshi for Intervener

**CORAM: Mrs.MRIDULA BHATKAR, J.  
DATED: JUNE 27, 2018**

**P.C. :**

1. This application u/s 438 of the Code of Criminal Procedure filed by the applicant/accused is for seeking pre-arrest bail. Pursuant to the FIR No.0104 of 2018 the applicant/accused is prosecuted for the offences punishable under sections 306, 506 r/w 34 of the Indian Penal Code. The offence of section 306 is non-bailable and hence, this application.

2. The deceased committed suicide on 2.6.2018. It is the case of the prosecution that the deceased Jitendra Jagtap was conducting business of real estate and was occupying an open space which is jointly owned by the applicant/accused and one Sudhir Karnataki. There were tenants and other constructions on the said land and the deceased was managing the said property and trying to settle the matter with a view to obtain clear vacant land for the applicant/accused. The applicant/accused and Sudhir Karnataki have allowed him to use and occupy the said premises i.e., 481, Rastapeth, Pune. It is the case of the prosecution that prior to 2 to 3 months from the incident of the suicide, the deceased was pressurised by the applicant/accused and other persons for handing over the possession of the said land to the applicant/accused. The applicant/accused and the other persons were continuously demanding accused to sign blank papers and to hand over possession of the land. However, the deceased resisted and demanded that he should be paid the maintainance expenses incurred by him and for work of looking after and preservation of the said plot and it was refused by the applicant/accused and Sudhir Karnataki. It is the case of the complainant that on 1.6.2018 at around 10pm, when his father

returned home, he was looking nervous and scared. He informed the complainant that the applicant/accused and Sudhir Karnataki had meeting with him and they pressurised him to sign the blank papers and also threatened him that they would take forcible possession of the said land. The deceased did not dare to approach the police due to politically influential position of the applicant/accused.

3. Further chronology of the events given by the prosecution is as follows:

As per the case of the prosecution on 28.5.2018, the deceased and his brother, a police constable, went to the applicant/accused to settle the matter amicably. At that time, they had verbal altercation and the applicant/accused threatened him of dire consequences. On 2.6.2018, the complainant went to the office of his father at Rastapeth to meet his father, at that time, one person Vinod Bhole and 6 to 7 unknown persons were present in the office. From the body language of those persons, the complainant could gather the gravity of threats given to his father earlier. The co-accused Vinod Bhole and the other persons made his father to sit in between them on a sofa and they started

pressurising his father and then one of them who is a co-accused, told the complainant to take a last photograph of his father as alive on that place and from next day, his father would not have any connection with the said plot and to keep that photograph as a memory. Thereafter, those persons left the site and then, his father also left the office with one Sachin Pawar. However, as the father did not return till afternoon, at 2 pm, the complainant phoned Sachin, who told him that he left deceased to some other bungalow. The complainant tried to contact his father on his cell phone. Somebody picked up the phone and he could identify that it was the voice of his father's friend, a rickshaw owner, namely, Shakti Raj, but he disconnected the phone and thereafter, he came to know that his father has committed suicide on a railway track. The said Shakti Raj, a rickshaw owner, informed the complainant that one envelope was handed over to him by the deceased before he committed suicide. So, the complainant opened that envelope and found the suicide note, signed and written by his father. Thereafter, his son immediately gave complaint to the police on 3.6.2018.

4. Mr.Desai, the learned Senior Counsel appearing for the applicant/accused, submitted that there is no evidence against the applicant/accused to justify his prosecution u/s 306 of the Indian Penal Code. The learned Counsel has submitted that the criteria for bail and anticipatory bail is the same as both the provisions protect the liberty of an individual, which is guaranteed under the Constitution of India. The person who is entitled to get bail, is also entitled to anticipatory bail. In support of his submissions, he relied on the judgment in the case of **Bhadresh Bipinbhai Sheth vs. State of Gujarat and anr.**<sup>1</sup>.

5. The learned Senior Counsel submitted that to constitute an offence u/s 306, the Court has to ascertain whether there is an abetment or not. There should be evidence of instigation, aid or conspiracy as contemplated u/s 107 of the Indian Penal Code. He read over the ratio laid down in the judgement of this Court in the case of **Rahul Raj Singh vs. The State of Maharashtra**<sup>2</sup>. He heavily relied on para 8 of the order which reads thus:

“8. .... It is necessary to show whether the accused was having mens rea that he wanted deceased to commit suicide. Harassment, suspicion, disputes, quarrels, jealousy, vengeance,

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1 (2016) 1 SCC 152

2 ABA No.661 of 2016 decided on 25.4.2016

ego can be the reasons to commit suicide. However, to constitute the offence under section 306 what is required is an abetment. There should be such an act or illegal omission to show that a person has instigated or he provoked or incited or encouraged to do the act of suicide. Mental element plays significant role in criminal law. Under Explanation 2, the person does something in order to facilitate commission of that act is an abettor. To facilitate commission of that act means to make it easier or to help. How a person will react to a situation is unpredictable. Sensitivity differs from person to person, does the reaction. Every suicide has cause but all the causes cannot be labelled as abetment. Therefore, while assessing abetment, the Judge has to take the objective view guided by section 107 of the Indian Penal Code. The harassment or torture should be of such a degree that it really left no option and drove a person to commit suicide. An individual may carry suicidal traits, or may be very emotional or may be very egoist or be jealous or vindictive. Such emotions may overpower the individual leading him to take drastic step to kill himself or herself. Under such circumstances, unless the *mensrea* is brought on record, *prima facie* it cannot be said that it is an abetment.”

6. He submitted that considering the facts of this case, there is no evidence to show that the applicant/accused wanted the deceased to die and therefore, he abetted or instigated the applicant/accused to commit suicide. The learned Senior Counsel explained the history of the litigation of the said plot which was earlier acquired by the government and recently, the Supreme Court gave a verdict in favour of the applicant/accused. Thus, there was no need for the applicant/accused to give threats to the deceased. Moreover, the applicant/accused never wanted the deceased to commit suicide. The learned Senior Counsel has

submitted that on the contrary, he wanted him to survive and hand over possession of the plot to the applicant/accused. In the event of commission of suicide, the applicant/accused was aware that he would not get peaceful possession of the land and the process of possession would be protracted. The learned Counsel has pointed out the letters dated 1.6.2018 written by the applicant/accused to the Deputy Commissioner of Police, Circle 1, Pune and the Senior Police Inspector, Vishrambaug Police Station, Pune so also other various police personnel informing that the deceased was blackmailing the applicant/accused and trying to extort money by giving threat of committing suicide. The learned Counsel further pointed out that it is the duty of every citizen to inform the police about the possibility of commission of any offence and the applicant/accused was thus, very much concerned about the life of the deceased so he vigilantly informed the police to save the life of the deceased. The manner in which the death occurred and the suicide note arrived in the incident is doubtful.

7. Ms.Dabholkar, the learned APP appearing for the State, assisted by Mr.Joshi, appearing for the complainant, who has filed an intervention application, has relied on the contents in the FIR

and has submitted that there is enough material against the applicant/accused that he has intentionally threatened the deceased so that he would commit suicide. The learned Prosecutor relied on the statements of the other witnesses which the police till now, have recorded and the suicide note wherein the deceased held the applicant/accused responsible for his suicide. It is further submitted that the applicant/accused has written the letters to various police authorities with ulterior motive to show fake concern, 3 days after the deceased told him he would commit suicide. Had the applicant was so much concerned about the life of the deceased, then, he would have sent such letters immediately on the next date i.e., on 29.5.2018. the learned AGP submitted that the applicant/accused is having criminal antecedents and is involved in 13 to 14 cases of different nature and hence, the order passed by the learned Sessions Court is to be maintained.

8. Heard submissions. Perused papers. In the case of **Bhadresh Bipinbhai Sheth vs. State of Gujarat (supra)**, the offence was registered initially u/s 506 part II of the IPC. At that time, the accused was released on bail. Thereafter, section 376 of

the Indian Penal Code was added and the learned Magistrate while passing the said order of committal, directed the accused to be taken into custody. At that time, the accused applied to the Sessions Court for grant of anticipatory bail. While dealing with that issue, the Supreme Court has laid down certain guidelines and has held that the gravity of charge and the exact role of the accused must be properly comprehended. It has held thus:

“25.4 There is no justification for reading into Section 438 CrPC the limitations mentioned in Section 437 CrPC. The plenitude of Section 438 must be given its full play. There is no requirement that the accused must make out a “special case” for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary power conferred by Section 438 CrPC to a dead letter. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. ....”

9. Similarly, the law is settled in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra**<sup>3</sup>. While deciding the application of anticipatory bail, the balance has to be struck between two factors i.e., no prejudice shall be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. The law on the point of anticipatory bail is thus settled and the

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3 (2011) 1 SCC 694

Courts very well bear in mind that the liberty is the soul of democracy and they are the protectors of the same.

10. In the present case, the applicant/accused is facing the charge of abetment to commit suicide u/s 306 of the Indian Penal Code. This Court in the case of **Rahul Raj Singh (supra)** has considered what is meant by abetment in the light of section 306 of the Indian Penal Code. The relevant portion from para 8 of the said order is reproduced above. Thus, this Court has to examine the present case of the accused and the material against him on the background of the said ratio and also consider whether harassment or torture which is alleged by the prosecution and the witnesses against the applicant/accused is of such a degree that it really left no choice and incited the deceased to commit suicide.

11. From the facts placed before the court, it appears prima facie that the applicant/accused was demanding the possession of the impugned land from the deceased. Few incidents of putting pressure on the deceased by the accused and the co-accused are narrated by the complainant in the FIR. On perusal of the statements of some witnesses, it appears that the applicant/accused has threatened the deceased and has put him

to the terms in respect of handing possession of the land. The FIR discloses the incidents of such threats, extortion and also the motive. However, there are two incidents which constitute the ingredients of instigating the deceased to commit suicide. Prior to 1.6.2018, the meeting of the applicant/accused and the deceased and his brother took place at the office of the applicant/accused wherein verbal altercation took place between the parties and thereafter on 1.6.2018, the applicant/accused wrote letters to various police personnel informing that the deceased has threatened him that he would commit suicide unless he is paid enough by the applicant/accused. The submissions of the learned Senior Counsel for the applicant/accused that the applicant/accused being vigilant citizen, his conduct of sending these letters to inform the police authorities that the deceased is going to commit the offence of committing suicide, shows that the applicant/accused really did not want the deceased to commit suicide, are not convincing at this stage. Through the letters, the applicant/accused has communicated to the police about the possible commission of the offence, however, they were not written for rescue but apparently were written to save himself, rather has prepared his anticipated defence. He has specifically mentioned

that in the event of suicide, the applicant/accused should not be held responsible. These letters reveal that the applicant/accused was fully aware of the mental condition of the deceased that he is likely to commit suicide. The subsequent incident of visit of 6 to 7 persons to the deceased on 2.6.2018 establishes nexus between the applicant/accused and the commission of suicide. These persons went to the office of the deceased, demanded vacant possession of the plot from him and threatened that he would face dire consequences and asked his son to take his last photograph. The said photograph is placed on record. The manner in which the photograph was taken and in view of the contents in the FIR, I am of the opinion that these are all cumulative circumstances which, prima facie, show that the applicant/accused has instigated the deceased to commit suicide. If there would not have been subsequent incident of visit of these 5 to 6 persons to the office of the deceased and there would not have been any threat given by these persons, then, the letters would have been a fact in favour of the accused but these letters followed by the said visit of the co-accused giving ultimatum to the deceased prima facie establishes proximity of the accused with the incident of suicide. Instigation has different shades and expressions having its impact on the

victim. Suicide is a helpless response given or self destructive reaction of the victim to the existing circumstances. In such a case, by refusing the pre-arrest bail, rule of law can be respected. The circumstances which are brought before the Court by the prosecution reveal a classic case of instigation and applicant/accused has harassed the deceased so much that he has driven the deceased to an extent of committing suicide.

12. Pre-arrest bail is to be granted to protect the liberty of an individual who is falsely implicated and *prima facie*, there is no material against him. However, this is not so in the present case.

13. Thus, granting anticipatory bail cannot be justified. The application is rejected.

14. Criminal Application No.694 of 2018 also stands disposed of.

15. Issuance of Certified copy is expedited.

**(MRIDULA BHATKAR, J.)**