

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

ANTICIPATORY BAIL APPLICATION NO. 1217 OF 2018

Shri.Sudhir Vasant Karnataki ...Applicant

Versus

State of Maharashtra ...Respondent

**WITH
CRIMINAL APPLICATION NO. 782 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 1217 OF 2018**

Jayesh Jitendra Jagtap ...Intervenor/
Applicant

IN THE MATTER OF

Sudhir Vasant Karnataki ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.M.S.Mohite, a/w. Mr. Prashant Relekar, Mr. Parth Shah and
Mr.S.R.Phanse I/b. Mr.Kuldeep S. Patil for the Applicant.

Mr.Satyavrat Joshi for the Applicant in APPP No. 782 of 2018.

Ms. Pallavi Dabholkar, APP for the State

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: JULY 26, 2018**

P.C. :

1. This application for pre-arrest bail under Section 438 of the Code of Criminal Procedure is filed by the applicant/accused in C.R. No. 0104

of 2018. The applicant/accused is prosecuted for the offence of abetment to commit suicide punishable under Section 306 of the Indian Penal Code, 1860 (hereinafter referred to as "the I.P.C."). The application for pre-arrest bail of one of the co-accused has been rejected by this Court vide order dated 27th June, 2018. The facts are as follows :

2. The deceased Jitendra Jagtap committed suicide on 2nd June, 2018. It is the case of the prosecution that the deceased was conducting a business of real estate and was occupying an open space which is owned by one Dixit family. The applicant/accused was engaged by that family as a developer and co-accused Deepak Mankar was a consenting party as he was the earlier developer. 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 possession of clear vacant land for co-accused Deepak Mankar was supposed to hand it over subsequently to the present applicant/accused. It is the case of the prosecution that the applicant/accused and co-accused Deepak Mankar have allowed the deceased 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 pressurized by the applicant/accused and

co-accused Deepak Mankar for handing over the possession of the said land. They were continuously demanding to sign blank papers and to hand over possession of the land. However, the deceased resisted and demanded that he should be paid the maintenance expenses incurred by him and for work of looking after and preservation of the said plot, which was refused by the applicant/accused and co-accused Deepak Mankar. It is the case of the prosecution that on 28th May 2018, the deceased and his brother, who is a police constable, went to the applicant/accused to settle the matter amicably. At that time, there was an exchange of hot words and the co-accused Deepak Mankar threatened him of dire consequences. On 1st June, 2018, the deceased had informed his son that the applicant/accused and co-accused Deepak Mankar had a meeting with him and they pressurized him to sign on blank papers and also threatened him that they would take forcible possession of the said land. The deceased had also expressed that he did not have courage to approach the police due to politically influential position of the co-accused Deepak Mankar. On 2nd June, 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 pressurizing 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 the deceased at 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.

3. Mr.Mohite, the learned Counsel appearing for the applicant/accused, submitted that there is no evidence against the

applicant/accused to justify his prosecution under Section 306 of the I.P.C. The learned Counsel submitted that the earlier owner had entered into an Agreement of Development in respect of the plot with co-accused Deepak Mankar and one lady M.S.Vartak. However, as they could not develop the land, a tripartite Agreement dated 10th January, 2005 was executed wherein the co-accused and M.S.Vartak were consenting parties. The said plot is under reservation with encroachments. He has further submitted that the co-accused Deepak Mankar has agreed to hand over clear vacant plot to the applicant/accused and his partnership firm. Against the same, the co-accused Deepak Mankar was to be paid money as per the schedule fixed between the parties. He has further submitted that the plot was in the litigation due to encroachment and was also under reservation. Therefore, co-accused Deepak Mankar was litigating the matter, which was taken up to the Supreme Court and finally the Supreme Court cleared all the reservations and thus, the vacant plot was to be handed over to the applicant/accused and his partnership firm. The deceased was occupying some portion of the said plot as a representative of the co-accused Deepak Mankar. The deceased was appointed and given a job by the co-accused to clear encroachment and to look after the plot, so that it could be preserved. The deceased was employed by the co-accused Deepak Mankar and not by the applicant/accused. He has

further submitted that the applicant/accused has not played any role which leads to the role of abetment in this suicide case of the deceased. He has further submitted that the applicant/accused met deceased last on 28th May, 2018 when the deceased had visited the office of the applicant/accused and thereafter, he did not meet him either on 1st June, 2018 or on 2nd June, 2018. In the complaint though certain allegations are made against him about putting pressure or threats, this cannot be treated as an abetment to commit suicide. He has pointed out that in the suicide note dated 2nd June, 2018 written by the deceased, though the name of the applicant/accused is mentioned as he used to harass the deceased, the name of the co-accused Deepak Mankar is specifically mentioned as a reason for the death. He has further submitted that there is no evidence showing the connection between the suicide committed by the deceased and the act committed by the applicant/accused.

4. In reply, the learned APP submitted that there is evidence against the applicant/accused about instigation and abetment. There is evidence to show that the applicant/accused, co-accused Deepak Mankar and the deceased were involved in some transaction in respect of the plot. In the F.I.R., the complainant has specifically stated that the applicant/accused alongwith the co-accused used to harass and

pressurize the deceased for handing over vacant possession of the plot and to sign on the blank papers. She has pointed out that in the suicide note dated 2nd June 2018, the name of the applicant/accused is appearing and a specific act of harassment is attributed to him. She has relied on the statements of other witnesses on the point of involvement of the applicant/accused in the offence. She has further submitted that it is the case of the abetment to commit suicide. The Court has to consider that the applicant/accused has abetted and instigated the deceased to commit suicide. In support of her submissions, she has relied on the ratio laid down in the judgments of the Supreme Court in the case of ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*** reported in ***AIR 2010 SCC 1446*** and also in the case of ***Didigam Bikshapathi and Another versus State of Andhra Pradesh*** reported in ***(2008) 1 SCC (Cri.) 434***.

5. Mr. Joshi, the learned Counsel for the intervenor, has pointed out that this Court has rejected the application of co-accused Deepak Mankar. The case of the applicant/accused is worst compared with the case of the co-accused. The applicant/accused has forwarded a letter to Kothrud Police Station on 2nd June, 2018 informing that the deceased has threatened to kill and commit suicide. He has further pointed out that these facts were mentioned in para 9 of the Bail Application before

the Sessions Court, Pune and the learned Sessions Judge has taken a note of such conduct of the applicant/accused and has rightly stated that the applicant/accused was aware that the deceased was going to kill himself. This fact was deliberately suppressed in the present application. He has argued that the transaction between the deceased, co-accused Deepak Mankar and the present applicant/accused is evident so also from F.I.R., it can be easily gathered that the applicant/accused was involved in the harassment and pressurizing the deceased, which ultimately led the deceased to commit suicide. He has submitted that the applicant/accused and the co-accused Deepak Mankar have criminal history and they are associated with each other and responsible for the death of the deceased.

6. Heard submissions. Read documents.

7. In the case of ***Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*** (*supra*), framing of the charge against the appellant for commission of offence under Section 306 r/w. Section 34 of the I.P.C. was challenged. The Supreme Court has explained the term “instigation”, which is used in Section 107 of the I.P.C. It has also held that the accused by his acts or by a continued course of conduct, created such circumstances that the deceased was left with no other

option except to commit suicide. Keeping in mind the ratio of the matter, the facts of the present case are to be assessed. It is also to be noted that the said case was in respect of framing of charge and the present case is of pre-arrest bail.

8. In the case of ***Didigam Bikshapathi and Another*** (*supra*), the Supreme Court has discussed the importance of suicide note and appreciation of such note in the case of Section 306 of the I.P.C. However, it was an application for quashing. The contents of each suicide note is required to be assessed on the background of the circumstance of each case.

9. The law is settled in the case of ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** reported in **(2011) 1 SCC 694**. 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 Courts very well bear in mind that the liberty is the soul of democracy and they are the protectors of the same.

10. From the facts placed before the Court, it appears *prima facie* that the applicant/accused, who was having a business transaction with co-accused Deepak Mankar has demanded possession of the impugned plot from the deceased. He being a beneficiary of the said Agreement was interested in the capacity of a builder/ developer. There may be some incidents of pressurizing the deceased while demanding the possession of the vacant land. In the F.I.R., it is mentioned that the applicant/accused has pressurized the deceased for signing some blank papers and asked possession. However, it may constitute other offence and not abetment to suicide. In the suicide note also the name of the applicant/accused has appeared. The deceased has blamed him and the co-accused Deepak Mankar for harassing him and, therefore, he attributed the cause of his suicide to the said harassment. However, in the last line of the suicide note, the deceased has specifically mentioned that co-accused Deepak Mankar is the cause for his death. It is to be noted that every suicide has cause, but every cause cannot be labelled as an abetment and, therefore, the harassment and torture where the applicant/accused was involved is a cause, but that cannot be considered as an abetment itself unless some other evidence showing the abetment, as contemplated under Section 107 of the I.P.C., which is a basic ingredient to constitute an offence under Section 306 of the I.P.C. is placed before the Court.

11. As per the case of the prosecution, on 2nd June, 2018 at around 1.00 p.m., the deceased committed suicide on the railway track and in the morning at around 10.00 a.m., 7 to 8 unknown persons alongwith one co-accused Vinod Bhole have visited the office of the deceased and they threatened him. They made the deceased to sit in between them on a sofa and they started pressurizing him 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. That incident appears to be a trigger for the desire to commit suicide and it ultimately led the deceased to commit suicide.

12. A specific query was made to the prosecution that in the statements recorded of these 7 to 8 co-accused, whether either of them have mentioned that at the instance of the applicant/accused, they had visited the office of the deceased and threatened him. The learned APP, on telephonic instructions, informs the Court that the name of the applicant/accused is not mentioned in their respective statements. Thus, an immediate connection between the suicide of the deceased and the act of threats by the applicant/accused is missing.

13. There is no evidence to show that there is continuous pressure or threat so also to assess the trigger of threat on the part of the applicant/accused that he has instigated the deceased to commit suicide. There is *prima facie* evidence against the co-accused Deepak Mankar and, therefore, his application was rejected. However, the case of the applicant/accused and the co-accused on this point, *prima facie* stand on a different footing. The letter is referred to by Advocate Mr. Joshi, was sent on 2nd June, 2018 by the applicant/accused to Kothrud Police Station. The said fact was disclosed and mentioned in his Criminal Appeal. The application before the Sessions Court cannot be considered at this stage as evidence against him. Firstly, the Investigating Officer has not collected the said letter till today from Kothrud Police Station for the reasons best known to him. Secondly, there is no record as to when that letter was sent by the applicant/accused i.e., before or after the time of suicide. Such letter can be sent by a person out of fear and panic. Therefore, the letter which was sent by co-accused Deepak Mankar on 1st June, 2018 and the letter sent by the applicant/accused need to be appreciated with a different perspective. Considering *prima facie* evidence, I am of the view that the applicant/accused is entitled to pre-arrest bail and accordingly,

the Anticipatory Bail Application is allowed with the following terms and conditions as mentioned:-

ORDER

- (i) In the event of arrest, the applicant/-accused shall be released on bail upon furnishing P.R.Bond in the sum of 30,000/- (Rupees Thirty Thousand only) each with one or two solvent sureties in the like amount.
- (ii) The applicant/accused shall report to the concerned police station on every Tuesday and Friday between 11.00 a.m. to 12.00 noon till 31st August, 2018 and co-operate with the Investigating Officer.
- (iii) The applicant/accused shall not tamper with the evidence or pressurize the witnesses.
- (iv) The applicant/accused shall not indulge into any criminal activity.
- (v) The applicant/accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

- vi) In the event of breach of any of the above conditions,
the prosecution will be at liberty to move the Court
for cancellation of bail.

14. Anticipatory Bail Application is disposed accordingly.

15. Criminal Application No.782 of 2018 also stands disposed of.

(MRIDULA BHATKAR, J.)