

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 1575 OF 2018**

Fahad Asif Khan & Anr.

....Applicants.

Vs.

The State of Maharashtra

....Respondent.

Mr. V.V. Purwant for the Applicants.

Mr. Ameet Palkar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 8th AUGUST, 2018.

P.C.:-

This is an Application under Section 439 of the Code of Criminal Procedure for bail in CR No. I-432 of 2017 dated 31st July, 2017 registered with Manpada Police Station, District Thane under Sections 306, read with Section 34 of the Indian Penal Code, now culminated into Sessions Case No. 294 of 2017.

2 Heard the learned counsel appearing for the Applicant and the learned APP. Perused the charge sheet.

3 The name of the deceased is Mr. Mukesh P.Meena. The date of incident is 26th July, 2017.

It is the case of the prosecution that, the Applicants and their father Asif Khan Ali Mohammad Khan had taken hand-loan of Rs.25,00,000/- from the deceased, when they were staying as

neighbours at Camp No.4, Ulhasnagar, District Thane. The Applicants did not repay the said loan amount. That, the deceased subsequently, shifted to Dombivli and started residing at Shankeshawar Nagar, Opposite Shani Mandir, Dombivli (East), District Thane.

The deceased committed suicide by hanging prior to 10.00 p.m. of 26th July 2017. During the house search of the deceased, the police found a suicide note wherein, it is stated that, as the Applicants and their father did not repay the said hand-loan, being fad up for the same, he was committing suicide.

During the course of the investigation, the Applicants came to be arrested on 4th August, 2017 and after completion of investigation, the police have submitted charge sheet.

4 At the outset, the learned APP submitted that, the Bail Application bearing No.92 of 2018 preferred by the father of the Applicant namely Asif Khan Ali Mohammed Khan was dismissed as withdrawn by this Court by its Order dated 22nd March, 2018 and therefore, the Applicants are not entitled to be released on bail on the ground of parity.

5 The learned counsel appearing for the Applicants submitted that, the parity in negative form cannot be made applicable

if the Applicants are otherwise entitled to be released on bail on merits. In view thereof, the present Application was heard on merits.

6 The record indicates that, the first informant in a statement recorded under Section 174 of the Code of Criminal Procedure did not express doubt against anybody and it is only when the police searched the premises, they found the said suicide note.

It is to be noted here that, the deceased in the said suicide note had admitted the fact that, he has no proof of advancing the said hand-loan of Rs.25,00,000/- to the Applicants and their father. The evidence on record further indicates that, a neighbor of the Applicants and the deceased at Ulhasnagar namely Premshankar Trivedi has stated that two years prior to the alleged incident of suicide, a quarrel/scuffle had taken place between the deceased and the family members of the Applicants.

7 It *prima facie* appears from the record that, there was no immediate cause at the instance of Applicants, which can be termed as abatement to the deceased to commit suicide on the date of the incident. It further *prima facie* appears from the record that, the facet of instigation at the instance of the Applicants is also silent and therefore, at this stage, the benefit of the same can be given to the

Applicants.

8 In view of above, the Applicants can be released on bail.

Hence, the following order.

- a) The Applicants be released on bail in CR No. I-432 of 2017, registered with Manpada Police Station, District Thane, now culminated into Sessions Case No. 294 of 2017, on their furnishing PR bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.
- b) After their release from Jail, the Applicants shall attend the Manpada Police Station, District Thane, on every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- c) The Applicants shall attend all the dates before the Trial Court unless precluded on medical reasons.
- d) The Applicants shall not tamper with the evidence and/or pressurize the prosecution witnesses.

9 Application is allowed in the aforesaid terms.

**S S
Mashalkar**

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by S S Mashalkar
Date: 2018.08.20
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(A.S. GADKARI, J.)