

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

ANTICIPATORY BAIL APPLICATION NO. 1382 OF 2018

Munaf Abdul Rehman Baloch	... Applicant
Vs.	
State of Maharashtra	... Respondent

**WITH
CRIMINAL APPLICATION NO. 939 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 1382 OF 2018**

Vinaykant Brijmohan Jha	... Applicant
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In the matter between

Munaf Abdul Rehman Baloch	... Applicant
Vs.	
State of Maharashtra	... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1383 OF 2018**

Munaf Abdul Rehman Baloch	... Applicant
Vs.	
State of Maharashtra	... Respondent

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Mr. Aniket U. Nikam i/by Shri Aashish Stapute for the applicant.

Mr. Ashok Saraogi a/w Mr. Akash A Singh for the applicant in intervention application No. 939 of 2018.

Mr. A.R. Kapadnis, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 12th DECEMBER, 2018**

P.C. :-

These are applications under Sections 438 of Code of Criminal Procedure seeking anticipatory bail in connection with offence registered in respect to First Information Report. In ABA No. 1382 of 2018, the applicant is apprehending arrest in connection with C.R. No. 13 of 2018 registered with Arnala Police Station for offence punishable under Section 306 read with 34 of Indian Penal Code whereas in ABA No. 1383 of 2018, the applicant is apprehending arrest in C.R. No. 20 of 2018 registered with Manikpur Police Station for the offence punishable under Sections 306 of Indian Penal Code.

2 The applicant had preferred applications for anticipatory bail before the Sessions Court which were rejected vide order dated 15th February, 2018 and 12th February, 2018 respectively.

3 The case of the prosecution relates to the unfortunate incident of suicide committed by the victims who were brothers. The incident in both these cases are co-related with each other. The First Information Report vide C.R. No.13 of 2018 was

registered on 23rd January, 2018 whereas the First Information Report vide C.R. No. 20 of 2018 was registered on 17th January, 2018. The factual matrix of prosecution case is that on 8th November, 2017 there was an accident between Vikas Zha and Smt. Mithilesh Zha in the premises of society wherein both of them were driving their respective vehicles. In pursuant to that Vikas Zha lodged the complaint against Smt. Mithiles Zha it was bearing No. 105 of 2017 for the offence under the Motor Vehicle Act. In relation to the same incident Smt. Mithilesh Zha also lodged the complaint with the concerned police station against Vikas Zha and his two sisters which was treated as non-cognizable complaint bearing No. 477 of 207 for offence under Section 323, 504 of Indian Penal Code. On 9th November, 2017 Smt. Mithilesh Zha accompanied by the applicant visited Virar Police station and lodged the complaint in respect to the aforesaid incident and FIR was registered vide CR No.623 of 2017, for the offences punishable under Sections 354, 323, 324 and 504 read with 34 of Indian Penal Code (“IPC”, for short) against Vikas, Vinayakant, Amit and Shweta. it is further alleged that in pursuant to that the applicant recorded the conversion of Smt. Mithilesh Zha and Amarnath Zha, as to how Vikas Zha has been causing trouble to

people. The applicant had allegedly recorded the video of the same conversation of his mobile phone and the same was purportedly uploaded on his Facebook and was made viral. It is further alleged that the applicant had also recorded the news relaxed on television in relation to the earlier case registered against Vikas vide CR No. 665 of 2016 under Section 406, 420 of Indian Penal code after recording the said news the same was uploaded on his Whatsapp and Facebook. It is further alleged that on account of the aforesaid recording being made viral several persons had expressed their views and also condemned the conduct of the Vikas Zha and on account of that he was mentally disturbed. The circulation of the said recording caused defamation and harm to his reputation, as a result of which he was depressed. He was disturbed with the fact that the police inspector Yunus Shaikh and applicant had connived to register false case against him, demanded money and caused physical and mental torture. Vikas Zha recorded video holding police Inspector Yunus Shaikh and applicant responsible for his death and committed suicide by setting himself on fire in the vicinity of office of S.D.P.O. Vasai on 10th November, 2017. It is further alleged that in pursuant to that father Vinaykant and brother Amit made representations for taking

action against P.I. Yunus Shaikh, applicant and others. FIR was registered vide C.R.No. I – 20 of 2018, with Manikpur Police Station on 17th January, 2018, for offence under Section 306 of IPC. Amit Zha filed a petition in the High Court seeking transfer of investigation on 17th January, 2018. It is further alleged that Amit Zha and his father Vinaykant were persuing action against persons responsible for death of Vikas Zha with senior police officers and other authorities. Being frustrated with inaction , Amit Zha recorded video on his mobile holding P.I. Yunus Shaikh, applicant and police department for death of Vikas and himself. In pursuant to that Amit Zha had consumed insecticide on BolinJ-Agashi road on 20th January, 2018, and, he died on 22nd January, 2018, FUR was registered on 23rd January, 20918, vide C.R.No. I – 13 of 2018, with Arnala Police Station, under Sections 306, 34 of IPC on the complaint of father Vinaykant Zha. Thus, it is the prosecution case on account of harassment meted out to the deceased brothers, they were compelled to commit suicide within short span of time.

4 Learned counsel for the applicant appearing in both the applications submitted that taking the prosecution case as it is, it cannot be said that the alleged act would constitute abetment to

commit suicide. The requisite ingredients to constitute the said offences are completely absent in both cases. It is submitted that the alleged incident at the most amounts to act of defamation and merely because the aggrieved persons purportedly with the help of applicant had resorted to legal proceedings, it cannot be said that there was any instigation on the part of the applicant to the deceased to committed suicide. It is submitted that there was no reason for the victims to commit suicide. Although the incidents are unfortunate, the applicant cannot be prosecuted for the offences punishable under Sections 306 of Indian Penal Code. It is further submitted that the victims and their family ought to have resorted to the remedies available to them in law, in case they were aggrieved by the alleged acts committed by the accused. However, instead of taking recourse to legal action available under law the victims had committed suicide. The victim Amit Zha had allegedly committed suicide having grievance against the police department for their inaction. It is submitted that the lodging of complaint against Vikas and others and recording of video would not be requisite ingredients to establish the offence under Section 306 of Indian Penal Code. It is further submitted that the applicant had challenged the registration of the First Information

Report before this Court by preferring a writ petition which is pending in this Court wherein it is directed that the charge-sheet shall not be filed by the police. It is submitted that Yunus Shaikh, Police Inspector was also impleaded as accused was arrested and he had preferred an application for bail before this Court which has been allowed by order dated 24th April, 2018. It is submitted that in the said order, this Court has observed that prima-facie it is doubtful whether in the facts Section 306 of Indian Penal Code is disclosed. It is submitted that other accused Smt Mithlesh Zha and Amarnath Zha were arrested and they were granted bail. It is submitted that in the factual aspects of the present cases custodial interrogation of the applicant is not necessary. He is willing to co-operate with the investigation. The evidence is already collected by the police. The statement are also recorded and therefore the custody of the applicant for the purpose of investigation is not necessary. It is therefore prayed that the application may be granted bail.

5 Learned counsel for the applicant in support of his submission relied upon several decisions are as follows:

- (1) *Madan Mohan Singh Vs. State of Gujrat and Another*¹;
- (2) *Dilip Ramrao Shirasrao and Anr. Vs. State of Maharashtra and Anr.*²;
- (3) *Sanjay Shinde Vs. State of Maharashtra, order passed by this Court* ³;
- (4) *State of Gujarat Vs. Pradyuman R. Mehta and Anr.* ⁴

6 Learned counsel for the applicant placed on record the documents in relating to the complaint lodged against the deceased Vikas Zha. It is submitted that the deceased had antecedents. Initiating any legal action against him or public awareness about him would not amount to abetment to commit suicide.

7 Learned APP submitted that there is evidence on record to support the charge under Section 306 of Indian Penal Code. The contents of the First Information Report and the investigation conducted by the police clearly establishes that the

1 *(2010) 8 SCC 628;*

2 *Criminal Application No. 332 of 2016*

3 *Criminal Writ Petition No. 825 of 2014*

4 *(Guj HC) 1998 SCC online Guj.227.*

accused were responsible for abetting suicide of victim. It is submitted that the contention of the applicant about applicability of Section 306 of Indian Penal Code cannot be considered at this stage and the same is quired to be adjudicated at the time of trial. *Prima facie* on the basis of the statement of the complainant, the documents collected during the investigation and the statement of other witnesses establishes the offences against the applicant which are invoked by the prosecuting agency. It is submitted that there is sufficient evidence against the applicant to show his involvement in the crime. The applicant had accompanied Smt. Mithilesh Zha to the police station and in pursuant to that FIR was registered against Vikas Zha and his family members under the influence of the applicant and police. P.I. Yunus Shaikh has been impleaded as accused for his role in the crime and he was arrested. It is submitted that apart from accompanying Smt.Mithilesh to the police station, after registration of the First Information Report, the applicant had recorded the conversation by video recording on his cell phone and the same was uploaded on his Facebook which was circulated on social media. As a repercussion of such circulation of various comments were received from the people, condemning the acts of Vikas Zha. It is further submitted that, the

applicant also posted to the recording of video in respect to the news which aired on television qua registration of earlier case against the Vikas Zha and same was also uploaded on Whatsapp and Facebook. It is submitted that the grievance of the family of the victim is that the applicant had influence with the police. The victim Vikas Zha committed suicide after recording his video stating reason for suicide and set himself on fire in front of S.D.P.O. Office. It is further submitted that in pursuant to that on account of non action of the police, the family of Vikas Zha had made representation seeking justice. However being frustrated with the authorities, the elder brother Amit Zha also recorded video stating reasons for committing suicide and committed suicide by consuming insecticide. It is further submitted that the police has collected the evidence regarding to the overt act attributed to the applicant. It is further submitted that the applicant has been avoiding arrest since long. Learned APP also pointed out the investigation papers, to show that there is substantive evidence against the applicant which establishes the offence under Section 306 of Indian Penal Codee and his custodial interrogation is necessary.

8 Learned counsel for the intervenor reiterated submission advanced by the learned APP. In addition to that it is submitted that the father of the victim had lost two young sons on account of harassment and mental torture caused to them and the entire family at the instance of the accused which includes the police personnel. It is further submitted that the victim Amit Zha had preferred a writ petition before this Court seeking transfer of investigation to another investigating agency. However during the pendency of the said petition he has committed suicide. It is also submitted that this Court had directed the transfer of investigation to CID. It is submitted that the evidence collected by the police cannot be brushed aside at this stage by accepting the contention of the applicant that the offence under Section 306 of Indian Penal Code is not made out. It is therefore prayed that the application preferred by the applicant be rejected.

9 Having heard both the sides extensively, I have perused the documents on record. I also perused the investigation papers placed for consideration by learned APP through Investigating Officer. Prosecution relates to death of two young person who had committed suicide within short span of time. The

tragic incident of suicide of Vikas arose out of the incident dated 8th November, 2017 wherein minor accident had taken place in the premises of the society where the victim Vikas Zha and Smt. Mithlesh Zha were involved. Consequently, Vikas Zha had lodged the complaint against the Mithlesh Zha. It is also apparent that Smt. Mithlesh Zha also lodged report to the police in respect to the incident which was treated as a non-cognizable complaint for the offence under Section 323, 504 of Indian penal Code. However in respect to the said incident, Smt. Mithesh Zha accompanied by the applicant had visited the police station on 9th November, 2017 and persuade the police to register FIR vide CR No.623 of 2017. Although, initially, the complaint was registered as non-cognizable complaint, subsequently, vide CR 673 of 2017 the cognizable offences were registered under section 354, 323, 504 read with 34 against Vikas Zha, his father Vinaykant, brother of the Amit and sister Shweta. It is the case of the prosecution that the applicant had persuaded the police to register the said FIR. After registration of the FIR, the applicant had purportedly recorded the conversation of Smt. Mithlesh Zha and her husband Amarnath Zha by recording Video on his cell phone and same was uploaded on his Facebook. The prosecution has collected evidence in that

regard. It is also alleged that the applicant had recorded news item which was aired on television in respect to previous case registered against Vikas Zha and said recording was uploaded on Whatsapp and Facebook and both these recording were made viral which were purportedly seen by the members of the public. The contents of the said recording indicate information was circulated on social media condemning act of Vikas Zha. It is also revealed that the members of the public have viewed said recording and expressed their view deprecating behaviour of the victim. The applicant was not concerned with the incident which had occurred between Smt. Mithlesh Zha and vikas Zha, however, he persuade the police to register the offence which are cognizable in nature. Assuming that any citizen can render help to the victim who is aggrieved and seeking justice, it is pertinent to note that after registration of the said FIR he had proceeded to record the conversation as stated herein above which was also uploaded on his Facebook and Whatsapp and made viral to the public. From the Investigation papers, it appears that the statement of the father of the victim was recorded. The victim's father had expressed displeasure with regards to the inaction of the protector of law in taking action in respect to the said incident of suicide. Grievance

is also expressed against the police attached to the said police station wherein purportedly illegal demands were made from the father of the victim. The Police Inspector attached to Virar Police Station was also made responsible for abetment to suicide and was impleaded as one of the accused. The primary contention of the applicant is that the alleged acts did not constitute the abetment to commit suicide and requisite ingredients to establish the said offences are completely absent in the present case. I have gone through the investigating papers, first information report and the evidence collected by the Investigating Machinery. In the factual matrix of this case, at this stage, and in this application, it is not possible to give a finding that the alleged act do not constitute under Section 306 of IPC. It is pertinent to note that two young persons who were brothers had committed suicide and the reasons for taking such steps were recorded in the Video by them and one of them had also uploaded the same on You Tube, and, thereafter, committed suicide. Victim Vikas Zha was the first person who committed suicide having grievance against the applicant as well as police machinery for the inaction and not taking proper action in respect of their complaint and for acts committed by accused. Prima facie case is made to deny relief under Section 438 of

Cr.P.C. Apparently, applicant has been avoiding his arrest. I have also perused the order passed by the Division Bench of this Court wherein it is directed that the charge-sheet may not be filed. It is apparent from the said order that the prosecution had sought time to complete the investigation and till the next date, the Court had directed them not to file charge-sheet, the order does not expresses any view on the merits of the case. In the light of the factual matrix of the case and evidence collected by the police, no case for grant of anticipatory bail is made out. The decision relied upon by the learned counsel for the applicant which relates to the settled law with regards to Section 306 of IPC were delivered in facts of the respective cases. The observations while granting bail to co-accused were applicable to the said accused.

10 Hence, I pass the following order.

ORDER

- (i) Anticipatory Bail Application Nos.1382 and 1383 of 2018 are rejected;
- (ii) Criminal Application No.939 of 2018, stands disposed off;

- (iii) It is clarified that the observation made in this order are *prima-facie* observation for considering this application for anticipatory bail and the trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)