

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

BAIL APPLICATION NO. 2136 OF 2018

Shyam Bhikaji Nipunge

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Ashok Mundargi, Sr. Counsel i/by Mr. Nitin Sejpal and Ms. Pooja Sejpal for the applicant.

Mr. Y.M. Nakhwa, APP for the Respondent-State.

Mr. K.D. Sonwane, PSI, Kalwa Police Station is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 18th SEPTEMBER, 2018.

P.C.

1. This is an application for bail in C.R. No. I-290 registered with Kalwa Police Station. The applicant was arrested on 27th September, 2017. The FIR was registered on 7th September, 2017. The offence was registered under Section 306 read with Section 34 of Indian Penal Code.

2. Investigation is completed and the chargesheet has been filed. The complaint was lodged by Mr. Sujit Pawar who is brother of the deceased Subhadra Pawar. The prosecution case is that complainant is employed with Navi Mumbai Police as Police Constable since 2012. From 2013, he is attached to Turbhe MIDC Police Station. Sister of the complainant Ms. Subhadra Pawar was

employed with the Thane City Police as Lady Police Constable in since 2014. Subhadra had love affair with Amol Phapale (Accused No.2). The said accused No.2 is employed with Mumbai police as police constable. Family of the complainant and the accused Amol are hailing from the same native village and therefore, family of complainant was aware about their love affair. In 2016, it was decided to solemnize the marriage of Subhadra with accused Amol. They were in regular touch with each other on telephone. On 6th September, 2017, the complainant was at his house. He received a phone call from co-accused Amol who informed him that his life is destroyed and he should come to Thane. Complainant rushed to Thane on his motor-cycle. He received another call from Amol who informed him that Subhadra had hunged herself and committed suicide. The complainant rushed to Kalwa Police Station. On enquiry, Amol informed him that on 6th September, 2017 at about 11 a.m. he had visited Subhadra at her house. She was continuously receiving calls on her mobile from applicant while they were having lunch and upon inquiry she had informed that she was receiving calls from applicant-accused and he is asking her to meet him and that he would set her duty. The applicant met them outside on the road and informed complainant

that he would discuss outside. The complainant, applicant and co accused Amol reached the residence of Subhadra, they had saw that deceased Subhadra had committed suicide by hanging herself to ceiling fan by Dupatta. Hence, FIR was registered with the Kalwa Police Station on 7th September, 2017. Spot panchanama was drawn. Dead body of Subhadra was sent for post mortem. The cause of death was Asphyxia due to hanging. Supplementary statement of the complainant was recorded on 9th September, 2017. In supplementary statement the complainant had raised questions such as how co accused Amol was in possession of both mobile phones, she had sustained injuries on chest, face, nose, forehead, there were quarrels between Amol and Subhadra since last one and half month as Amol was suspicious about her, why Amol was standing outside the house of deceased for 15 minutes, how both accused had come to the house of the deceased and why Subhadra had committed suicide after changing clothes. Thereafter subsequent statement of the complainant was recorded on 29th September, 2017 in which it is stated that Amol had informed the complainant that he would not marry Subhadra. Statement of various other persons were recorded and on completing the investigation chargesheet has been filed. Applicant

was posted at Thane headquarters as Assistant Commissioner of Police.

3. Learned counsel for the applicant submitted that applicant is in custody since the date of his arrest. Investigation has been completed and chargesheet has been filed. Taking the case of the prosecution as it is the offence under Section 306 of Indian Penal Code is not made out against applicant. Prosecution has proceeded on the basis that applicant has made several call to deceased Subhadra. The complainant has also stated that there was dispute between Amol and Subhadra as he was suspicious about her. It is further submitted that calls were also received from deceased by the applicant. It is not the case of the prosecution that there was any illicit relationship between the applicant and the deceased. The prime suspect Amol Phapale has been released on bail by Sessions Court. Co-accused was in company of the deceased prior to incident. The applicant is implicated on the basis of statement of co-accused. The complainant has not stated in FIR that the deceased had informed him that she was continuously receiving telephone calls from the applicant. It cannot be said that on account of receipt of calls the deceased was instigated to commit suicide. The applicant is under suspension

and question of tampering witnesses who are from police department does not arise.

4. Learned APP submitted that applicant used to make calls to deceased repeatedly and harass her. From the First Information Report, it is apparent that applicant used to call deceased and inform her that he would set her duty and she should meet him. He relied upon call details which indicates that applicant had made several calls to the deceased. The applicant is likely to tamper evidence. He also pointed out the statement of Bhagyashree Sawant and Rohini Tathe recorded by the police during the course of investigation. Rohini Tathe is a police constable. She stated that in July 2017 while she alongwith Subhadra Pawar were waiting for bus after finishing their duty, police vehicle in which applicant was sitting stopped infront of them and they were given lift by applicant. At that time, applicant took mobile number of Subhadra. Latter Subhadra told her that she had given incorrect number. Bhaghyashree Sawant has stated that Subhadra was sharing room with her. She used to get calls on mobile frequently. She was short tampered. He submitted that on account of continuous harassmt caused by the applicant, the deceased was compelled to commit suicide, therefore the applicant

is liable to be prosecuted for the offence punishable under Section 306 of Indian Penal Code. The offence is of serious nature. The applicant is Assistant Police Commissioner attached to Thane City Police Station and the deceased was police constable. Due to repeated calls made by applicant the deceased was mentally tortured. He had also sent text messages to deceased. During the period from 17th July, 2017 to 6th September, 2017. The applicant had made about 111 calls to Subhadra and from the other phone the applicant had made 37 calls.

5. I have gone through the documents on record. The complainant has alleged that on the date of incident Amol informed him that Subhadra was repeatedly getting calls and when he enquired with her she informed him that ACP Nipunge is calling her and telling her that he would do setting of her duty and she should meet him. Amol also told the complainant that even in his presence Subhadra got calls from applicant. However, in his supplementary statement he stated that there were disputes between Amol and Subhadra since last one and half month. The complainant raised several other questions in his supplementary statement. Vide Statement dated 28th September, 2017, the complainant has stated that on 6th September, 2017 Amol Phapale

had informed him about the incident of suicide by Subhadra on phone and he had stated that he would not marry Subhadra. The said conversation is recorded in his mobile which was handed over by him. The transcript of the said conversation is part of chargesheet. The conversation reveals that complainant was called by Amol as he wanted to talk to him urgently. The co-accused Amol also stated to complainant that he do not want to marry Subhadra, and his life is destroyed. Thereafter, Amol informed that Subhadra has hanged herself by locking the door. Thus, the co-accused was with Subhadra before the incident. Amol Phapale is granted bail by Sessions Court. The prosecution case proceeds on the basis that applicant had made repeated calls to Subhadra and caused harassment to her and also on the footing that there were disputes between co-accused Amol and Subhadra since last one and half month. The Sessions Court while rejecting the application for bail by order dated 29th June, 2018 had observed that the main ground for objection is that applicant was on higher post in police department and likely to pressurize the witnesses and likely to destroy evidence. Though, chargehseet is filed the apprehension of Investigating Officer about pressurizing witnesses can be still considered in view of post he is holding in

police department. It is further observed that most of material witnesses are from police department, therefore using his good office there is likelihood of pressurizing witnesses or tampering prosecution witnesses, hence, releasing applicant on bail will be against interest of prosecution witness.

6. It is true that the applicant is holding post in police department as Assistant Commissioner of Police, but on surmises and conjectures the application for bail was rejected on the aforesaid apprehension. It is difficult to accept that police witnesses can be tampered. The applicant is under suspension. The evidence is also based on call records which is part of chargesheet. He is in custody from 6th April, 2018. There are no criminal antecedents against the applicant. The investigation is completed and the chargesheet has been filed.

7. Taking into consideration the aforesaid circumstance bail can be granted to the applicant on certain terms and conditions. Hence, I pass the following order.

ORDER

- i) Criminal Bail Application No. 2136 of 2018 is allowed.
- ii) The applicant is directed to be released on bail in connection with C.R. No. I-290 of 2017 registered with Kalwa Police Station

on furnishing P.R. Bond of Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like amount;

iii) The applicant shall report Kalwa Police Station once in a month on first Saturday between 10 a.m. to 12 noon till further order;

iv) The applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

v) The application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date:
2018.09.24
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