

CRIMINAL BAIL APPLICATION NO. 2413 OF 2018

Mr. Kabul Singh Labana for the applicants.
Mr. Y.Y. Dabke, APP for the Respondent-State.

P.C.

2. Case of the prosecution is that accused had promised the deceased victim that applicants would provide victim a owl having 10 nails which would create a magic of failling of currency notes. The victim was induced to part with the huge amount of Rs.15,00,000/- for the said ten nail owl. The accused kept on

promising the victim that promises would be fulfilled. However, the accused did not provide ten nail owl, the victim was frustrated on account of conduct of the accused. On demanding returning of money from the accused, Accused Nos 1 and 2 threatened victim that the false case will be registered against him under the Black Magic Act. Applicant No.3 had threatened with the case would be registered against him alleging outraging modesty. In the circumstances, victim was in disturbed state of mind and therefore on 16th March, 2018 he committed suicide by hanging himself. ADR was registered on 16th March, 2018. During the search of the residential premises a note was found which was written by the victim wherein he has indicated the applicant/accused are the person who were responsible of the causing and the reasons for committed suicide. The note was handed over to the police. FIR was registered on 17th March, 2017 under Section 306 read with 34 of Indian Penal Code. Investigation is completed and chargesheet has been filed.

3. Learned counsel for the applicants submits that offence under Section 306 is not punishment with imprisonment of life. Applicants are in custody since arrest. Investigation is completed and chargesheet has been filed. The genuineness of the note

purported written by the victim is under cloud of suspicious. There are contradictions in the evidence collected by police and suicide note. It is further submitted that ADR was registered on 16th March, 2018. The police had visited the residential premises of the deceased at that time the said note was not found and therefore it is apparently prepared and fabricated on the next day with a view to implicate the applicant in the said crime. It is further submitted that applicants were arrested on 21st March, 2018. Further custody of the applicant is not necessary. Prosecution has not established the source of Rs. 15 Lakhs. The deceased was not employed and was not in a position to make an arrangement of such a huge amount. It is submitted that although in the suicide note it is stated that amount was paid in the presence of Sumit Bhalerao, his statement has been recorded by the Investigating Officer wherein he has stated that he had never seen the deceased in the company of the accused. It is further submitted that version reflected in the suicide note cannot be relied upon. It is further submitted that suicide note refers to mortgaged gold chain and allegedly the said ornament was mortgaged with one of the witness in the year 2015. However, the statement of the said witness has been recorded who has stated

that gold chain was mortgaged in 2014. It is further submitted that there is no evidence of expert to establish that the suicide note is written by the deceased. Investigating machinery has collected old note book which is allegedly contains handwriting of deceased. It is therefore submitted that applicant be granted bail.

4. Learned APP submitted that there is sufficient evidence to show the complicity of accused in the crime. All applicants had induced the victim to part with the amount of Rs.15,00,000/-. There is evidence in the form of the statement of several witnesses which shows the involvement of the applicant in the said crime. It is further submitted that suicide note has been written in details which refers to the circumstances as to how the accused had cheated the victim. It is further submitted that applicant No.3 had threatened the victim that she would implicate the victim in the false case under Section 354 of Indian Penal Code. The other accused had also threatened the deceased that he would be implicated in false case alleging that he is conducting magic. In the circumstances, the victim who was young boy was depressed. It is therefore submitted that there is sufficient evidence against the applicant to commit the suicide by the victim.

5. I have gone through the chargesheet. The case of the

prosecution is primarily based on the suicide note. The suicide note was found on 17th March, 2018. I have perused the said note. The deceased has purportedly written the said note and given details as to how he had parted with the amount to the applicants, the humiliation meted to him and threats issued by the accused. The note also refers to the witnesses with whom the gold ornament was mortgaged to obtain the loan amount. It also refers to the fact that owner of aquarium had seen him visiting the shop of accused frequently. The details which are reflected in the suicide note are corroborated by the statement of witnesses. Only discrepancy which can be found is that one of the witness Sumit Bhalerao has denied having seen the victim in the company of the accused. However, statement of other witnesses recorded during the course of investigation refers to the statement of witness Sayyed Gulamahmed who stated that the victim used to frequently visit the shop of the accused. The statement of Jeweller was recorded in which he has stated that gold ornaments were mortgaged with him in the year 2014 by the victim. This fact is stated in the suicide note of the victim. Discrepancy is in respect to year when the transaction had taken place. The suicide note is written in such details, it is not possible to any other person to

fabricate such a suicide note within a day after the alleged incident. The suicide note clearly states as to manner in which the victim was humiliated and as to how induced the part of the amount under the pretext that he would be provided owl which showers currency notes. Suicide note also indicate that victim was insisted for return of money. He did not want to burden on the family. However, as far as applicant No. 3 is a lady and it is alleged that she has threatened the complaint about outraging modesty against the victim and demands the money from the victim. It is noted that applicant No.3 is also in custody from the date of arrest. Considering the role assigned to her, bail can be granted to the applicant No.3 only. In the light of material collected, no case for grant of bail is made out against the applicant Nos. 1 and 2 and therefore application deserves to be rejected.

ORDER

- i. Criminal Bail Application No. 2413 of 2018 in respect to the applicant Nos.1 & 2 is rejected. The application for applicant No.3 is allowed.
- ii. Applicant No.3 is directed to be released on bail in C.R. No. I-46 of 2018 registered with Badlapur Police Station on furnishing

P.R. Bond in the sum of Rs. 20,000/- with one or more sureties in the like amount.

iii. Applicant No. 3 is permitted to furnish cash security in the sum of Rs.20,000/- for a period of six weeks.

iv. Applicant No.3 shall attend Badlapur Police Station on first Saturday between 10 a.m. to 12 noon till conclusion of trial;

v. Criminal Bail Application No. 2413 of 2018 stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.10.31
16:12:35 +0530