

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

**ANTICIPATORY BAIL APPLICATION NO. 1353 OF 2019**

Girish Shantilal Shaha

..Applicant

V/s

The State of Maharashtra

..Respondent

- Mr. Ashok Mundargi Senior Advocate a/w Mr. Chandansingh Shekhawat a/w Amit Patil i/by Parinam Law Associates for the Applicant.
- Ms. S.S. Kaushik,APP for the State/Respondent.
- Yogesh S. Patil, PSI Juna Rajwada Police Station, Kolhapur present.

**CORAM : SARANG V. KOTWAL, J.**

**DATE : 4<sup>th</sup> September, 2019**

**P.C. :**

1. The applicant is seeking anticipatory bail in connection with C.R.No. 229/2019 registered at Juna Rajwada Police Station, Kolhapur under Sections 201, 324, 306 and 506 of I.P.C.

2. The offence is registered at the instance of deceased Aatish Giribuwa himself. The offence was lodged on 07/06/2019 at about 12.50 p.m. The alleged offence had occurred at about 8.00 p.m. on the

previous day. Deceased expired on 08/06/2019. Initially the offence was registered only under sections 324 and 506 of I.P.C. but subsequently other sections i.e. sections 306 and 201 of I.P.C. were added.

3. The F.I.R. mentions that deceased Aatish was a Civil Engineer and he was working with the applicant since last two years. He was supervising a site. On 06/06/2019, at 7.30 p.m. the informant reached applicant's office at Kolhapur. Informant was told by the applicant that the informant had caused loss of Rs. 60,000/-. The informant was willing to make payment of such amount but the applicant insisted that informant should pay Rs. 1 lakh. When the informant refused to pay the amount of Rs. 1 lakh, the applicant started assaulting him with a hockey stick. He also threatened to kill his family members as well. F.I.R. further mentions that the informant thereafter consumed poison which he had brought to spray in his field as insecticide. F.I.R. also mentions that immediately the applicant took him to hospital and admitted him there. On this basis, F.I.R. was lodged. Subsequently informant died because of consumption of poison.

4. The cause of death is mentioned as death due to paraquat poisoning with evidence of multiple contusions. Post Mortem notes do show presence of four contusions over hands and legs.

5. After death of the informant, other sections, particularly Section 306 of I.P.C. were added.

6. I have heard Mr. Ashok Mundargi, Ld. senior Counsel for the Applicant and Ms. Kausik, Ld. APP for the State/Respondent.

7. Mr. Mundargi submitted that the act of present applicant will not fall within the meaning of abatement as required under section 107 of I.P.C. and under section 306 of I.P.C. The applicant's act was not committed with intention that the deceased should commit suicide, though at this stage, it is difficult to disbelieve allegation of assault. Even assuming that the assault had taken place, it was committed only because the applicant was under the impression that he was cheated by the informant. The informant on his own has committed suicide. He therefore submitted that since the offence is not made out, custodial interrogation of the applicant is not necessary.

8. The learned APP has opposed this application. She added that, the F.I.R. shows that the informant was in the office of the applicant from 8.00 to 10.00 p.m. She submitted that the applicant should have removed the informant to the hospital immediately. She added that the manner in which the informant was assaulted shows intention of the applicant.

9. I have considered all these submissions. I have also perused the papers in respect of investigation carried out so far.

10. At this stage, the applicant cannot dispute the basic fact that informant was called to his office. He was threatened with allegations of misappropriation of amount and thereafter he was assaulted with a hockey stick by the applicant. Apart from that, the applicant was also threatened and demand of Rs. 1 lakh was made. In respect of this act of the applicant, it is difficult to observe that such act would satisfy the ingredients provided under sec. 107 of I.P.C. After this assault and demand of money, the informant consumed poison which he was already carrying. It is not the prosecution case that the applicant was aware that the informant was carrying bottle of poison and that he would consume it because of the assault.

11. The statements of eye witnesses Shailesh Makdum and Dattatray Jamdad show that after the incident of assault, the informant was looking to be under pressure. He went near stair-case for drinking water and consumed poison instead. He started vomiting. He was not in a position to speak. At that time applicant told his employees to bring rickshaw and to get him admitted in Ganesh Hospital. In that hospital Medical Officer told them that they did not have adequate medical facilities and they were directed to go to Saraswati hospital. Thereafter he was admitted to that hospital. Thus there was a time gap which was required to remove the informant to the hospital. Statements of these eye witnesses also show that as the applicant became aware of the fact that informant had consumed poison, he had taken immediate steps and had directed his employees to remove the informant to hospital. Statement of Omkar, brother of informant was recorded under Section 164 of Cr.P.C. which narrated story told to him by the deceased-informant. It is similar to the narration in the F.I.R. This story given by the informant to him would be his oral Dying Declaration. However, the question still remains as to whether the applicant has committed offence punishable under Section 306 of I.P.C. At this stage, it is difficult to observe that offence punishable under

Section 306 of I.P.C. is made out against applicant. Though this fact will have to be decided during trial, after entire evidence is lead. Therefore custodial interrogation of the applicant is not necessary though he can be directed to attend the Police Station and he can be directed to co-operate with the investigation. Hence, the following order.

**ORDER**

1. In the event of his arrest in connection with C.R.No.C.R.No. 229/2019 registered at Juna Rajwada Police Station, Kolhapur the Applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. The applicant shall attend Juna Rajwada Police Station, Kolhapur as and when called and shall co-operate with the investigation.
3. Application stands disposed of accordingly.

**(SARANG V. KOTWAL, J.)**