

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

ANTICIPATORY BAIL APPLICATION NO.1374 OF 2019

Shivaji Namdev Surve Applicant

versus

The State of Maharashtra Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.852 OF 2019**

Umesh Uttareshwar Surve Applicant

versus

The State of Maharashtra Respondent

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- Mr.V.V. Purwant, Advocate for Applicant in ABA No.1374/19.
- Mr.Aniket Nikam i/b. Mr.Vivek Arote, Advocate for Applicant in ABA No.852/19.
- Ms.S.S. Kaushik, APP for the State/Respondent.
- Mr.Fauzan Shaikh i/b. Sachin Thorat, Advocate for Intervener.
- ASI Salim Rahimbax Shaikh, Mohol Police Station, Solapur, present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 05th JULY, 2019**

P.C. :

1. Both these applications arise out of the same

allegations and out of the same Crime Number. Therefore both of them are decided together.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.182/19 registered with Mohol Police Station, Solapur, under sections 306, 507, 504, 506 r/w 34 of the Indian Penal Code.
3. The FIR in this case is lodged by one Ganesh Mahadeo Surve in respect of suicide committed by his father on 09/02/2019 between 04.00 a.m. to 07.00 a.m. in his agricultural land by hanging himself to a tree.
4. It is the case in the FIR that the deceased's two sons were residing separately and the daughter was married and was residing in her matrimonial home. It is further mentioned in the FIR that when the Inquest Panchanama was conducted, a suicide note was found in the pocket of the pant of the deceased in which it was mentioned that he was committing suicide because of constant harassment caused by both the Applicants.

Harassment was in respect of repayment of loan advanced by the Applicants. It is mentioned in the FIR that the deceased had taken Rs.3,00,000/- from the Applicant Umesh Uttreshwar Surve and Rs.1,50,000/- from the Applicant Shivaji Namdev Surve in the year 2011. For returning the loan amount, he had sold his land in the year 2014 and had paid Rs.3,00,000/- to Umesh and Rs.5,00,000/- to Shivaji. It is further case in the FIR that inspite of that, both of them were harassing the deceased. They used to constantly approach him and demand their money. They were demanding exorbitant interest and were demanding Rs.18,00,000/-. They were threatening that they would take possession of his agricultural land. It is the case of first informant that when he used to visit his father, he used to express his apprehension and fear in his mind. On 07/03/2019, the informant was telephonically told by his mother that both the Applicants had threatened the deceased that they would come to their house on 09/03/2019 and unless the money was paid, they would take possession of their land. Because of this harassment, the deceased committed suicide.

5. Heard learned Counsel Mr.V.V. Purwant for Applicant Shivaji Surve in ABA No.1347/19, learned Counsel Mr.Aniket Nikam for Applicant Umesh Surve in ABA No.852/19, learned Counsel Mr.Fauzan Shaikh for the Intervener and learned APP Ms.S.S. Kaushik for the State.
6. Learned Counsel Mr.Purwant for Applicant Shivaji Surve submitted that the Applicant himself had sold his land in the year 2011 and 2014 for performing marriage of his two daughters in those years. Therefore it was not possible that this Applicant would be in a position to advance loan to somebody else. He submitted that the sale of land of the Applicant was by registered documents.
7. Learned Counsel Mr.Aniket Nikam for the Applicant Umesh Surve submitted that assuming that everything as mentioned in the FIR to be true, it cannot amount to abetment of suicide as defined u/s 107 of the IPC. For that purpose, he relied on a few judgments. He invited my attention to the order

passed in ABA No.661/16 on 25/04/2016. In the said order the learned Single Judge of this Court has made certain observations in respect of interpretation of section 107 of the IPC. The observation run thus;

“8. To constitute the offence under section 306, it is necessary for the Court even at the stage of anticipatory bail to find out whether prima facie case of abetment as per the ingredients of section 107 of Indian Penal Code is made out or not. There should be instigation or conspiracy or a person should intentionally aid that the deceased should commit suicide. It is necessary to show whether the accused was having mens rea that he wanted deceased to commit suicide. Harassment, suspicion, disputes, quarrels, jealousy, vengeance, ego can be the reasons to commit suicide. However, to constitute the offence under section 306 what is required is an abetment. There should be such an act or illegal omission to show that a person has instigated or he provoked or incited or encouraged to do the act of suicide. Mental element plays significant role in criminal law. Under Explanation 2, the person does something in order to facilitate commission of that act is an abettor. To

facilitate commission of that act means to make it easier or to help. How a person will react to a situation is unpredictable. Sensitivity differs from person to person, does the reaction. Every suicide has cause but all the causes cannot be labelled as abetment. Therefore, while assessing abetment, the Judge has to take the objective view guided by section 107 of the Indian Penal Code. The harassment or torture should be of such a degree that it really left no option and drove a person to commit suicide. An individual may carry suicidal traits, or may be very emotional or may be very egoist or be jealous or vindictive. Such emotions may overpower the individual leading him to take drastic step to kill himself or herself. Under such circumstances, unless the mensrea is brought on record, prima facie it cannot be said that it is an abetment.”

8. In the said judgment it is clearly mentioned that the harassment or torture should be of such a degree that it really left no option and drove a person to commit suicide. Therefore in the present facts of the case, the degree of harassment has to be taken into consideration.

9. The next judgment he relied on was in the case of *Nagesh Prabhakar Rao Mahajan Vs. State of Maharashtra*, decided by Single Judge of this Court on 29/11/2018 in ABA No.1191/18. According to Mr.Nikam, it was mentioned that, the Applicant in that case, was pressurizing the husband of the deceased by consistently visiting her house for repayment of money. Obviously in the facts of that case the transaction was between husband of the deceased and Applicant therein. There was no direct transaction between the deceased and the Applicant in that case. Therefore the facts of that case are entirely different and are not applicable to the present facts.

10. Mr.Nikam then referred to the order passed by another Single Judge of this Court in Revision Application No.2/16 decided on 18/07/2016. He relied on the observations that when the creditor makes a demand for repayment of the borrowed sum and the debtor feels that the demand is unreasonable or illegal or premature, in that case legal remedy

is available to the debtor to redress his grievance. In the case before the Court there was no material on record to show that the deceased had tried to resort to any legal remedy. He took the decision of putting end to his life and the Court had observed that offence of abetment to commit suicide was not made out.

11. In the present case the transaction was not a written transaction and therefore there was no question of the deceased resorting to any legal remedy. Even observation in this judgment will not be applicable to the facts in the present case.

12. Mr.Nikam finally relied on an order of Division Bench of this Court passed in Writ Petition No.3315/18 on 26/10/2018. In the said case the deceased had committed suicide because he was humiliated by the Principal of School and the school teachers as he was suspended for a few days. Obviously, these facts cannot have any bearing on the facts before me in the present case.

13. The learned APP pointed out the investigation carried out so far. During the investigation it was found that the Applicants were contacting the deceased telephonically, which corroborates the statement recorded of the wife of the deceased, which shows that these Applicants were approaching the deceased and were constantly threatening him.

14. The statement of one Rahul Shivaji Doke also shows that the deceased had returned the amount of Rs.3,00,000/- to the Applicant Umesh and Rs.5,00,000/- to the Applicant Shivaji. The amount was returned by the deceased through this witness Rahul Doke. Rahul Doke states that he himself has handed over that amount to the Applicant. Thus, there is a clear mention of money lending transaction between the deceased and the present Applicant. There is sufficient material on the record to show that the deceased was constantly being harassed and just a day prior to the incident he was approached and was threatened. There is a direct connection between the acts of the

present Applicants and commission of suicide by the deceased. The act of the Applicants will clearly fall within the definition of section 107 of IPC. Therefore offence u/s 306 is also made out. In this view of the matter and taking into account the fact that since the date of offence the accused are absconding and not available for investigation, the application is rejected.

(SARANG V. KOTWAL, J.)