

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

ANTICIPATORY BAIL APPLICATION NO. 1648 OF 2019

Amit Vasant Kadam

...Applicant

Vs.

State of Maharashtra

...Respondent

- Mr. Ganesh Gole i/b Mr. Ateet Shirodkar, Advocate for the Applicant.
- Mr. Y. M. Nakhwa, APP for the State.
- Mr. Raju V. Mahanor, API, Loni Kalbhor Police Station, Pune Rural.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with CR No. 423/19 registered at Loni Kalbhor Police Station, Pune under Sections 306 read with 34 of the IPC.

2. The FIR is lodged by one Shivaji Chaindkar on 3rd June 2019 in respect of suicide committed by his son Sambhaji on 13th May 2019. He has stated in his FIR that the deceased had got married to his wife in the year 2005. They had a son who was about 13 years of age at the time of lodging of FIR. It is mentioned in the FIR that the wife of the deceased was having affair with one Amol

Chand since prior to her marriage. Even after marriage she continued to have relations with Amol. The deceased was upset because of that. Deceased was under depression and stress. He got addicted to liquor. In the past, he had tried to commit suicide on two occasions. The wife of the Deceased was working in a private company, where the present applicant was also working. It is alleged in the FIR that wife of the deceased was having affair with Amol, present applicant and one Chetan Karve. Deceased Sambhaji was knowing about her extra marital affairs with these people. It is alleged in the FIR that Sambhaji was convinced that his wife and accused Amol had spent a night together. The deceased had told the informant that on 4th May 2019 he had confronted the present applicant and his wife when they were together at hotel Garwa.

3. It is further mentioned that on 7th May 2019, deceased had told the first informant that inspite of his repeated requests to his wife, she was not willing to give up her relations with the present applicant, Amol and Chetan. It is further mentioned in the FIR that on 10th May 2019 deceased had gone to meet the present applicant. At that time, the applicant had assaulted him and had

told him that he was not willing to give up his relations with the wife of the deceased.

4. On 13th May 2019, in the morning at 8.00 a.m. deceased called the informant. At that time, he was very upset. At about 10.30 a.m. the deceased again called the informant and told him that his wife was talking with the applicant on telephone and he was very upset. Finally in the afternoon, he committed suicide. Based on these allegations, FIR is lodged.

5. Heard, Mr. Gole, learned counsel for the applicant and Mr. Nakhwa, learned APP for the State.

6. Learned counsel for the applicant submitted that the allegations against the present applicant are based on suspicion. The deceased was needlessly entertaining suspicion against the present applicant. He submitted that the applicant was working in the same company as the wife of the deceased. Therefore, they were bound to come in contact. He submitted that hotel Garwa is a restaurant and not a lodging hotel. Therefore, meeting one's colleagues in a restaurant would not mean that they were having affair. It is further submitted that since the deceased was making

allegations against him, the applicant was bound to defend himself. He submitted that in any case the allegations as a whole did not make out any offence of abetment as defined under Section 107 read with section 306 of the IPC. He further submitted that co-accused Chetan Karve is granted anticipatory bail by this court. This is a relevant circumstance.

7. Mr. Gole relied on the judgment of the Hon'ble Supreme Court in the case of **K.V. Prakash Babu Vs. State of Karnataka, (2017) 11 SCC 176**. Mr. Gole submitted relied on the observations of the Hon'ble Supreme court in respect of the non applicability of Section 306 of the IPC in such cases. In the case before Hon'ble Supreme Court the wife had committed suicide on the suspicion that the husband was having an extra marital affair. It was observed that seed of suspicion planted in the mind had brought the eventual tragedy, but such an event would not constitute the offence or establish the guilt of the accused under Section 306 of the IPC.

8. As against these submissions, learned APP submitted that the FIR mentions and the investigation reveals that two suicide notes

were found written by the deceased. In those suicide notes, the deceased has clearly blamed the present applicant as one of the persons who was responsible for his commission of suicide because of his affair with the wife of the deceased. He submitted that the judgment relied upon by Mr. Gole is not applicable in this case because that judgment was passed at the stage of final decision of an appeal. He submitted that the acts of the applicant would constitute the offence of abetment to commit suicide.

9. I have considered these submissions. The FIR and the suicide notes do indicate that the deceased was entertaining strong suspicion against the present applicant that he was having an extra marital affair with his wife. The FIR shows that the deceased was upset about these affairs. On 10th May 2019, deceased had tried to confront the applicant. However, it was natural for the applicant to have defended himself against such allegations. Apart from the suspicion entertained by the deceased, the investigation carried out so far does not indicate that the applicant was indeed having affair with the wife of the deceased. In any case, it cannot be said to be a circumstance which would leave the deceased no other

option but to commit suicide. The manner in which the person reacts to a situation depends on his mental setup. The applicant had not committed any act which would fall within the meaning of section 107 of the IPC. Even as per the allegations, assuming that the applicant was having an affair with the wife of the deceased, that does not mean that the applicant had instigated in any manner the deceased to commit suicide. The applicant can not be said to have intentionally aided the deceased in his act of commission of suicide. The trial court will have to address this issue. However, at this stage, the applicant has sufficiently made out his case for protection of anticipatory bail. Hence, the order:-

ORDER

(i) In the event of his arrest in connection with C.R. 423/19 registered at Loni Kalbhor Police Station, Pune, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

(ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)