

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.475 OF 2020

1. Iliyas Baig Murad Baig Mirza
Age:60 years, Occu: Agri.
R/o. Tongaon, Tq. Bhadgaon,
Dist. Jalgaon.
2. Sajid Shaikh Anwar,
Age : 40 years, Occu: Medical Practitioner,
R/o. Near SMIT College, Muktai Nagar,
Jalgaon.

PETITIONERS

VERSUS

The State of Maharashtra,
through P.S.I. Bhadgaon Police Station
Bhadgaon Dist. Jalgaon.

RESPONDENT

...
Advocate for Petitioner : Mr. Prakashsing B. Patil
APP for respondent /State: Mrs. D.S. Jape
...

CORAM : MANGESH S. PATIL, J.

Date : 23.09.2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned APP Mrs. D.S. Jape waives service of notice for the respondent. With the consent of both the sides the matter is heard finally at the stage of admission.

2. By invoking the powers vested in this Court under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, the petitioners who are the accused in Sessions Case No.232/2019 pending

on the file of the Sessions Court at Jalgaon are impugning the order passed by the learned Assistant Sessions Judge dated 27.02.2020 on their application (Exhibit-4) whereby they had sought discharge under Section 227 of the Code of Criminal Procedure but the application was rejected.

3. In sum and substance the allegations as can be discerned are to the effect that a boy aged 9 years by name Isham went missing on 21.03.2019. His dead body was traced on 22.03.2019. He was found to have been brutally murdered. It is then alleged that the parents and sister of Isham were residing at Bhadgaon. Whereas the informant who happens to be his brother was staying in Nagpur. After hearing the news he came down to Bhadgaon. The offence was registered in respect of murder of Isham.

4. It is then alleged that the petitioner No.1 is the landlord in whose premises the family of Isham was residing. The petitioner No.2 is the son-in-law of the petitioner No.1. Both the parents and sister of Isham committed suicide on 30.03.2019. A suicide note was found wherein it was *inter alia* alleged that the petitioners had recovered an amount of Rs.15,000/- from them promising to help them in carrying out investigation regarding murder. It is further mentioned in the suicide note that even after payment of Rs.15,000/- the petitioners were demanding more money. The informant then lodged the FIR and the offence was registered under Section 306 of the Indian Penal Code against both the petitioners for allegedly abetting suicide, punishable under Section 306 read with Section 34 of the

Indian Penal Code. The petitioners were arrested. Investigation was carried out and in due course of time they were charge sheeted and subsequently the case was committed to the Sessions Court.

5. By the application (Exhibit 4) filed under Section 227 of the Code of Criminal Procedure the petitioners sought discharge. After soliciting say from the prosecution, by the impugned order learned Sessions Judge rejected the application. Hence this petition.

6. The learned advocate Mr. Patil for the petitioner vehemently submits that accepting the allegations and the statements in the suicide note at their face value, the petitioners cannot be attributed with abetment of suicide. At the most it can be said that they have recovered some money and had promised to help the deceased in investigation of murder. All the necessary ingredients for constituting an abetment as defined under Section 107 of the Indian Penal Code are missing. A bare perusal of the suicide note would reveal that there were several other triggering factors with which the petitioners had no concern. In all probability the entire family was in grief and was perceiving that the investigation into the murder of Isham was not proceeding and the culprits were still at large. The learned advocate therefore submits that emotional reasons apart, there are no sufficient grounds to proceed against the petitioners.

7. The learned advocate would further submit that since there are no other connecting links to even remotely suggest that the petitioners had some oblique motive in demanding money, it would be an exercise in futility

in allowing the trial to go on with the quality of material collected by the Investigating Officer. Lastly the learned advocate submits that the learned Assistant Sessions Judge has not correctly appreciated the facts and circumstances and the material before him and has illegally refused to discharge the petitioners and the order may be reversed.

8. The learned APP Mrs. Jape vehemently submits that this is not the stage to scan the material threadbare. There is a suicide note which specifically attributes some role to the petitioners of demanding money and receiving some of it. There is also a reference about the petitioners having bluffed to help the deceased in tracing out the culprit who was responsible for killing Isham and in all probability this conduct of the petitioners had instigated the deceased to commit suicide. It is a case of suicide of three member of a family. The prosecution deserves to be extended an opportunity to substantiate its allegations. No error has been committed by the learned Assistant Sessions Judge in refusing to discharge the petitioners.

9. I have carefully gone through the papers with the able assistance of both the sides. At this juncture one will have to proceed on the basis of the statements made in the suicide note traced from one of the deceased. It is necessary to note at this juncture that except the suicide note there is no other material available in the charge sheet to demonstrate any other role to the petitioners except the one mentioned in the suicide note. It is therefore quite apparent that it is the contents of the suicide note which would be decisive of the matter. Though the suicide note runs into two

pages written in Hindi its substance can be summarized as follows:

“Our son has been brutally murdered.
 Finger is being pointed at us.
 Police is putting awkward question to us.
 Iliyas Baig, his wife and their sons are conversant and aware of everything but still were not helping. They had seen the boys with whom Isham was playing.
 If they (Iliyas Baig and his family) had wished they could have helped in nabbing the culprit.
 We paid Rs.15,000/- to Sajid (Petitioner No.2) who had said that the money was to be paid to a Sahab and again there is a demand for money stating that it was to be paid to a PA of an MLA from Jalgaon.
 When we said that we have no money to pay they (petitioners) told us that there would be no one talking from our side if the money was not paid and our son will not get justice.
 Isham was our asset and no reason had left for us to be alive.
 We are not getting justice and that is why we are ending our life.
 In the inquiry after our demise the culprit could be traced from the village itself and the information can be gathered from the boys playing with Isham but these boys were not opening their mouth.
 The culprit could have been nabbed had the resident of the locality and the landlord would have wished.”

10. As can be appreciated, though some of these contents attribute some role to the petitioners and particularly the petitioner No.2 of getting money from the deceased and making further demand under the pretext of paying it to a PA of an MLA, by further causing an apprehension in the mind of the deceased that no one would open the mouth unless the money was paid. Accepting these statements still, it is very difficult to comprehend as to how these statements and the alleged conduct of the petitioners can be said to be either instigation or intentional aid or a conspiracy to lead the deceased to commit suicide.

11. At the cost of repetition it is necessary to note that there are no witnesses attributing anything more to the petitioners as regards any other dispute between them and the deceased or even speaking about any bitterness in their relation. On the contrary the following recitals from the suicide note are eloquent enough and suggestive of the faith which the deceased had in the petitioners.

“Our deposit is with Iliyas Baig (Petitioner No.1). Even the 9 silver coins are with him which they had handed over to him after Isham was murdered”.

12. This statement shows that apart from paying money to the petitioners the deceased had faith in the petitioners and had handed over 9 silver coins for safe keeping. If such is the state of affairs, one cannot discern as to how the petitioners can be said to have had some interest in leading the deceased persons from the same family to commit suicide.

13. True it is that there are statements of some witnesses stating that the petitioners were suggesting the informant not to name anybody and particularly not to name persons from Muslim community and instead name persons from Hindu community as suspects. It is apparent that the learned Assistant Sessions Judge has swayed away with this communal aspect.

14. It is in view of such peculiar state of affairs that I had directed the parties to this petition to place on record the status of the investigation done in the case of murder of Isham to assure myself as to if there could be any link between the culprit in that case and the present petitioners. Pursuant thereto a copy of the entire charge sheet is placed before me today.

15. As can be seen the prosecution is now alleging that a boy aged 21 years by name Yash @ Golu @ Girmit @ Saban @ Khupsya Chandrakant Patil resident of Dambhurni Tq. Yawal had kidnapped Isham under the pretext of giving boxing lessons and carried him to a sugarcane field. He then made the boy to remove his clothes and sodomized and thereafter killed him. There is absolutely no iota of material suggestive of any nexus between the petitioners and the person accused of killing Isham. There is no record to show that they are related to him in some way or other. If this is the state of affairs, one cannot say that the petitioners were aware of some facts which could have helped the Investigating Officer in providing some link in connection with the murder of Isham.

16. I therefore of a firm view that though the deceased were perceiving that the petitioners could have helped in nabbing the killers of Isham, it was merely their perception based on some suspicion and that had nothing to do with any motive on the part of the petitioners to lead them to commit suicide.

17. There is one more aspect which needs a reference. If the entire suicide note is perused carefully, apart from the emotional trauma the family was facing because of brutal murder of a boy aged 9 years from their family and apart from the role sought to be attributed to the petitioners there were few more factors as well. As can be seen even the fingers were being pointed out at the family members, the police were interrogating them, the culprit was not being traced, their perception that residence of the locality

had some information but were not sharing it and they were not getting justice. It is therefore quite apparent that the very many circumstances cumulatively had led the deceased to commit suicide and it was not that any specific and exclusive role attributable to the petitioners constituted instigation. If such is the state of affairs, it cannot be said that there are reasonable grounds to believe that the petitioners have abetted suicide.

18. Without intending to burden this judgment with further discussion, it would be apt to observe that this Court had an occasion to face a similar situation and had considered the law, in the case of **Smt. Jayashree wd/o Sunil Kotgirwar Vs. State of Maharashtra and Another; Criminal Application No.93/2017 dated 20.03.2017**. I need only state that the observations touching the legal aspects in such matters of abetment of suicide punishable under Section 306 of the Indian Penal Code laid down in this decision will have to be followed and justify the conclusions drawn by me.

19. It is necessary to note that this decision was even cited before the learned Assistant Sessions Judge and finds place in the impugned order. However, the learned Assistant Sessions Judge has simply avoided to examine as to how the observations touching the legal aspect discussed therein would be applicable to the facts and circumstances of the matter in hand by stating in one line that the facts and circumstances before him were such that the accused i.e. the petitioners were not entitled to seek benefit of this decision of this Court.

20. Be that as it may, there are no reasonable and sufficient grounds to proceed against the petitioners and they deserve to be discharged.

21. The Writ Petition is allowed. The impugned order is quashed and set aside. The application (Exhibit-4) filed by the petitioners before the Sessions Court stands allowed and they are discharged.

22. The Rule is made absolute.

(MANGESH S. PATIL, J.)