

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

ANTICIPATORY BAIL APPLICATION NO. 759 OF 2020

1. Raju Ganpat Wagh .. Applicants
Age. 45 years, Occ. Business,
2. Shakuntala Raju Wagh
Age. 40 years, Occ. Household,
Both R/o. Anvi, Tq. Sillod,
Dist. Aurangabad.

VERSUS

The State of Maharashtra .. Respondents
Through P.I. Sillod Rural Police Station
Tal. Sillod, Dist. Aurangabad.

Mr. Abhishek M. Hajare, Advocate for the applicants.
Mr. V.M. Kagne, APP for the respondent/State.

**CORAM : V.L.ACHLIYA, J.
DATED : 27.10.2020**

P.C. :-

01. The applicants apprehending arrest in Crime No.224 of 2020, registered with Sillod Rural Police Station, Dist. Aurangabad for the offences punishable under sections 306, 498-A, 323, 504 read with section 34 of the Indian Penal Code, has preferred this application, seeking pre-arrest bail.

02. Heard learned Counsel for the applicants and

learned APP representing the respondent/State. Perused the papers of investigation and the order passed by the learned Additional Sessions Judge-6, Aurangabad, rejecting the application seeking pre-arrest bail filed by the applicants.

03. In brief, it is contention of the learned Counsel for the applicants that even if the allegations made in the FIR are accepted in its entirety and presumed to be true and correct, still it does not make out case for the offence punishable under section 306 of the Indian Penal Code against the applicants. It is submitted that the deceased was residing with her husband i.e. accused No.1 and her children. The applicants are residing in separate house and doing their own occupation. The marriage between the deceased and accused No.1 was solemnized in the year 1997. The incident in question leading to commission of suicide by the daughter of the informant had taken place after a period of 22 years of marriage. There is no iota of evidence to infer that the applicants aided, abetted and instigated the deceased to commit suicide. It is submitted that in order to attract offence punishable under section 306 of the Indian Penal Code, there must be an act of abetment defined under section 107 of the Indian Penal Code. No such act of aiding or instigating

the deceased to commit suicide spell out from the FIR lodged by the informant. The allegations are vague and general in nature and not sufficient to constitute the offences punishable under section 306 of the Indian Penal Code. It is further submitted that accused No.1 i.e. husband of deceased has been arrested and released on bail. The investigation is practically complete. The custodial interrogation of the applicants is not required. The arrest of the applicants would cause great harassment to them for no offence committed on their part.

04. On the other hand, learned APP opposed the application with contention that there is prima facie case to connect the applicants with the offences alleged against them. While referring the FIR and statements of three witnesses, which include children of the deceased, learned APP submits that there is evidence to show that the applicants were instigating the accused No.1 to seek financial assistance from the deceased's father. On account of continuous illtreatment and harassment, deceased committed suicide. In order to conduct proper investigation, the Investigating Officer may require custodial interrogation of the applicants.

05. I have carefully considered the submissions

advanced in the light of over all facts of the case, nature of accusation against the applicants and role attributed to the applicants in commission of the offence. In my view the allegations made in the FIR are not sufficient to prima facie attract the offence punishable under sections 306 or 498-A of the Indian Penal Code against the applicants. The marriage between the deceased and accused No.1 was solemnized in the year 1997. It appears that from the wed-lock with accused No.1 the deceased had given birth to three children. The eldest son of the deceased is aged 23 years. During the course of investigation, statements of the children of the deceased have been recorded. In the statement given to the police, the children of the deceased themselves stated that the deceased and applicants are residing separately. The accused No.1 was only earning member in the family. It was difficult for him to meet the requirements of his family from the limited income he was earning. Due to the financial difficulty, the behaviour of accused No.1 became irritative. Due to this reason, there used to be frequent quarrel between the deceased and accused No.1. The witnesses to the incident i.e. the children of the deceased have stated that the applicants had suggested the accused No.1 to explore the possibility to secure any financial help from his father-in-law. In my view, suggesting accused No.1 to explore the

possibility of securing financial help from the father-in-law, itself not sufficient to treat the act of the applicants to aid, instigate the deceased to commit suicide, so as to attract the offence punishable under section 306 of the Indian Penal Code. In order to constitute the offence punishable under section 306 of the Indian Penal Code, there must be an intentional act on the part of the accused to abet the deceased to commit suicide. The commission of any act without any intention to instigate the deceased to commit suicide not amounts to an offence punishable under section 306 of the Indian Penal Code. In that view, the applicants deserve to be extended protection under section 438 of the Criminal Procedure Code. The grant of anticipatory bail to the applicants would not hamper on-going investigation. In the facts and circumstances of the case, custodial interrogation of the applicants is not required. I am, therefore, inclined to allow the application. Accordingly, following order is passed :-

O R D E R

- (i) The application is allowed.
- (ii) The interim order dated 10.09.2020 is confirmed on same terms and conditions.
- (iii) The applicants shall appear before the Investigating Officer as and when directed by the Investigating Officer and co-operate in the

investigation.

(iv) The applicants shall not indulge into any act amounting to pressurizing the prosecution witnesses.

(v) It is clarified that observations made in the order are prima facie observations made for the limited purpose of deciding the present application. None of the observations made therein to be construed as observations made as to merit of case of prosecution against the applicants.

[V.L.ACHLIYA,J.]