

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.778 OF 2020

Balasaheb s/o Venunath Jarhad
Age: 53 Yrs., occu. Agril.
R/o Ashwi (Bk.) Tq. Sangamner,
District Ahmednagar = APPLICANT

VERSUS

The State of Maharashtra
Through Ashwi Police Station,
Ahmednagar = RESPONDENT

Mr.NS Ghanekar,Advocate for Applicant;
Mrs.Vaishali Jadhav-Patil,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 20th October, 2020.

PER COURT:-

1. Present applicant is apprehending his arrest in connection with CR No.186/2020 dated 8.8.2020 registered with Ashwi Police Station, Tq. Sangamner, District Ahmednagar for the offences punishable under Sections 306, 323, 504, 506 read with 34 of IPC.

2. Heard learned Advocate and learned APP for respective parties.

3. It has been submitted on behalf of the

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applicant that perusal of the FIR would show that the ingredients of the offence under Section 306 of IPC are absent. For invoking Section 306 of IPC, one must consider Section 107 of IPC. The contents of the FIR and the other papers would show that there was no instigation in any manner by the present applicant to the deceased. The contents of the FIR further show that the deceased was involved in sending the messages to a minor girl with whom, he states that, he had love affair. He continued the act of sending the messages to her even after her marriage was performed and, therefore, a meeting was called. As the applicant is well-wisher of family of the girl, he was present in the meeting, where it was agreed and decided that the deceased should not send such messages. It is stated in the FIR that when again such incident was found, present applicant-appellant along with others, went to the house of the informant, who is brother of the deceased at about 4.15 pm on 6.8.2020. At that time, he was not even present personally. But, it is stated that it was told to the informant that he should give understanding to the deceased if he repeats the acts. The informant

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states that when the deceased came back at 5.30 pm, he asked as to whom he has given message as the accused persons had come. But, then without hearing anything more, the deceased left on motorcycle and did not return. Thus, there was absolutely no dialogue between the applicant and the deceased which may be considered as instigation. The other IPC sections are bailable and at the most, it would be attracted to the deceased and not to the informant for which physical custody of the applicant is not required.

4. Learned APP strongly opposed the application and submitted that the statements of the witnesses would show that the threats were given by the applicant and others, who had participated in the meeting. Therefore, physical custody of the applicant is required.

5. Perusal of the FIR would show that the meeting was called by father of the girl when such acts of the deceased were made known. It is alleged that the deceased had love affair with the girl and in spite of the fact that the girl was

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minor, her marriage was performed, the deceased continued to send messages to the girl and on this count, the said meeting was called. The exact relationship between the applicant and the girl has not been stated in the FIR. But, reference can be made that he might be friendly to father of the girl. The FIR states that the first meeting was held on 10.7.2020 and second was on 11.7.2020. In those meetings it was decided to give understanding to the deceased that he shall not send message to the girl. So also, the girl was given understanding that she should not contact the deceased. It is then stated that on 6.8.2020, father of the girl, uncle, present applicant and one Vikas Gaikwad went to the house of the informant. The deceased was not present and father of the girl told the informant that he should give understanding to the deceased as he has again contacted to the girl. It is then stated that father of the girl, uncle and present applicant gave threat to kill the deceased. However, the FIR further states that when the deceased returned, the informant only asked him as to whom he has made message, as the father of the girl and others had

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come. It does not appear from the FIR that it was specifically told by the informant that the applicant had given threat to kill the deceased. But, the informant then says that without saying anything the deceased left and thereafter his dead body was found. At this stage, the Investigating agency has not shown that from 5.30 pm of 6.8.2020 till 11.00 am of 7.8.2020, the applicant had contacted the deceased. Therefore, whether the ingredients of Section 306 of IPC would be attracted, is a question, which requires that ingredients of Section 307 of IPC to be considered. Nothing is required to be seized at the instance of the present applicant and, therefore, his physical custody is not required. The application deserves to be allowed, however, subject to conditions. Hence, following order, -

ORDER

i. In the event of arrest of the applicant in connection with CR No.186/2020 dated 8.8.2020 registered with Ashwi Police Station, Tq. Sangamner, District Ahmednagar for the offences punishable under Sections 306, 323, 504,

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506 read with 34 of IPC., he be released on PR and SB of Rs.15,000/-.

ii. The applicant shall remain present before the Investigating Officer on every Monday between 10.00 AM to 12.00 PM till further orders.

iii. The applicant shall not commit similar offence and shall cooperate with the police during investigation.

iv. The application stands allowed and disposed of.

(SMT. VIBHA KANKANWADI,J.)

BDV