

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

ANTICIPATORY BAIL APPLICATION NO.820 OF 2020

1. Shaikh Nasreen w/o. Shaikh Fayum .. Applicants
@ Faheem, Age. 26 years,
Occ. Household,
2. Shaikh Banu Shaikh @ Shaikh Banu Bee
w/o. Shaikh Maulana,
Age. 50 years, Occ. Household,

Both residing at Salora, Taluka Bodhan,
Dist. Nizamabad (Telangana State)

VERSUS

The State of Maharashtra .. Respondent
Through Police Station Dharmabad,
Dist. Nanded.

Mr.Amar V. Lavte h/f. Mr. S.J. Salunke, Advocate for the
applicants.

Ms.R.P. Gour, APP for the respondent/State.

**CORAM : V.L.ACHLIYA,J.
DATED : 03.12.2020**

P.C. :-

01. The applicants apprehending arrest in CR No.160
of 2020 registered with Police Station, Dharmabad, Dist.
Nanded, for committing offence punishable under sections

306 and 506 read with section 34 of the Indian Penal Code, have preferred this application, seeking pre-arrest bail, on the ground set out in detail in the application.

02. Heard learned Counsel for the applicants and learned APP for the respondent/State. Perused the FIR and the papers of investigation.

03. In brief, it is contention of the learned Counsel for the applicants that the applicants are innocent and falsely implicated in the case at the behest of the informant. By referring to allegations made in the FIR, learned Counsel submits that, if the allegations made in the FIR are accepted in its entirety and presumed to be true and correct, still it make out no case to attract offence under section 306 of the IPC. It is submitted that in order to attract offence under section 306 of the IPC, there must be an act of abetment as defined under section 107 of the IPC. The person who said to have abetted the commission of suicide must have

played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. The act of abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. It is further submitted that suicide committed by deceased on account of long standing matrimonial discord with the wife itself not sufficient to attract the commission of offence under section 306 of the IPC. The act of mental or physical harassment without any intention to drive the deceased to commit suicide not sufficient to attract the offence under section 306 of IPC against the applicants.

04. It is submitted that as per the facts stated in the FIR, there was longstanding matrimonial discord and strained relationship between the deceased with his wife and in-laws. It is alleged that on account of harassment, the deceased was suffering at the hands of the applicants and co-accused, the deceased committed suicide on 21.08.2020. It is submitted that if the allegations made

in the first information report are taken to their face value, presumed to be correct still it will make out only case of mental and physical harassment of deceased at the hands of the accused. On the basis of such act of harassment, it cannot be inferred that the applicants and co-accused illtreated and harassed the deceased with intention to drive him to commit suicide. The act to be treated as an act of abetment to commit suicide punishable under section 306 of IPC, there must be an intentional act of aiding or instigating and abetting on the part of the accused to commit suicide. No such act of abetment to commit suicide attributed to the applicants in the facts and circumstances of the case.

05. It is submitted that in the facts and circumstances of the case, make out no prima facie case to attract the commission of offence under section 306 of the IPC on the part of the applicants. The investigation in the case is practically over. The co-accused i.e. father-in-law and brother-in-law of the deceased arrested

were released on bail. The custodial interrogation of the applicants is not required. The grant of anticipatory bail to them would not hamper the on-going investigation. On the contrary, refusal to extend protection from arrest may lead to serious consequences of arrest and humiliation for no offence committed on the part of applicants. In support of the submissions advanced, learned Counsel has referred and relied upon decision of the Apex Court in the case of Amalendu Palalias Jhantu Vs. State of W.B., 2009 AIR SCW 7070 and S.S. Chheena Vs. Vijay Kumar Mahajan & Anr., 2010 ALL MR(Cri.)3298(S.C.).

06. On the other hand, learned APP opposed the application with contention that the allegations made in the FIR and the complaint/representation made by deceased a day prior to the incident spell out that the applicants and co-accused have created such circumstances, whereby the deceased left with no option other than to commit suicide. By referring to overall facts of the case and accusation made against the applicant, learned APP

submits that the applicants and co-accused had made the life of the deceased so miserable that he was left with no alternative but to end his life. One day prior to day of incident, the deceased had lodged a complaint in the form of representation to police expressing danger to his life at the hands of the applicants and co-accused. In the complaint lodged, the deceased has narrated the illtreatment and harassment, he was facing at the hands of the applicants and co-accused. In the complaint the deceased has categorically mentioned that on 15.08.2020 while he was proceeding with Tiper Truck as a driver, the applicants and co-accused stopped him in the mid-way. He was beaten on the road and thereafter forcibly taken to their village Salora. While they were taking him to Salora, his friend Shaikh Pasha tried to intervene and tried to convince the applicants and co-accused, not to forcibly take him to village Salora. However, they paid no heed to his request. He was beaten throughout the night and next day he escaped and reached to his parents' house. He has expressed apprehension of danger to his

life from the applicants and co-accused. In this background, learned APP submits that there is strong case to connect the applicants with the commission of offence. In order conduct proper investigation, the custodial interrogation of the applicants may be required. The grant of anticipatory bail to the applicants would hamper the on-going investigation.

07. I have carefully considered the submissions advanced in the light of overall facts of the case and nature of accusation made against the applicants. In the complaint lodged, it is alleged that there was matrimonial discord between the deceased and his wife i.e. applicant No.1. Due to the matrimonial discord, there used to be frequent quarrel between them. It appears that the deceased was residing at his in-laws' house. In the light of allegations made in the FIR, it can be safely inferred that the deceased was facing mental and physical harassment at the hands of the applicants and co-accused. In order to attract offence

under section 306 of the IPC, there must be a case of suicide being committed on account of abetment made by the accused to the deceased. There must be active role played by the persons in abetting commission of suicide by the deceased. The expression 'abetment' has been defined under section 107 of the IPC. In that view, there must be an instigation or intentional act of aiding on the part of the accused so as to drive such person to commit suicide. Mere act of physical and mental harassment without any intention to drive a person to commit suicide itself is not sufficient to attract offence under section 306 of the IPC. In the case of **S.S. Chhena Vs. Vijay Kumar Mahajan & Anr. (Supra)**, the Apex Court has observed that abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, charge under section 306 of the IPC is not sustainable. In that view, there must be intentional act on the part of the accused to drive the deceased to

commit suicide. In absence of any intentional act of abetment to commit suicide on the part of accused, offence under section 306 of the IPC is not attracted.

08. Perusal of the complaint dated 23.08.2020 lodged by the father of deceased Shaikh Fayum spell out that there was matrimonial discord between deceased Shaikh Fayum with his wife. The marriage between the deceased and applicant No.1 – Shaikh Nasreen was solemnized about three years prior to incident. Out of their wed-lock, they are having two children – Shaikh Farhan, aged 2 years and Shaikh Fazal, aged 5 months. After the marriage, applicant No.1- wife of the deceased alleged to have suspecting that her husband is in illicit relationship with a woman from his village Karkheli. On that account, there used to be dispute between deceased and his wife. In order to resolve the dispute, the deceased went to stay at her in-laws house at Salora. About four months prior to the incident the deceased came back to his parents' house due to illtreatment and

harassment by his father-in-law and brother-in-law. On 15.08.2020 while the deceased was working on Tipper truck of one Moij Seth as a driver, his father-in-law, brother-in-law and wife of the deceased forcibly took him to village Salora and assaulted him. The accused gave threat that if he leaves village Salora, they will kill him. The deceased ran away from village Salora and came to stay at his father's house at Karkheli. Since then the deceased was under tension due to threat given by the accused persons and found to have committed suicide on 21.08.2020.

09. It appears from the papers of investigation that on 20.08.2020 the deceased had lodged complaint with Police Station, Dharmabad against the accused persons. In the compliant lodged, the deceased has mentioned the illtreatment and harassment which he was suffering at the hands of the accused person. He has alleged that on 15.08.2020 he was stopped in the mid-way and forcibly taken to village Salora and beaten by the accused

persons. He has expressed apprehension of danger to his life from the accused persons and urged to take action against them. On next day, the deceased found to have committed suicide.

10. Thus, if we consider overall facts of the case, then it is apparent that there was matrimonial discord between the deceased and his wife i.e. applicant No.1. In order to resolve the dispute, the deceased came to reside at her in-laws house. However, the relationship between the deceased and applicant No.1 remained to be strained. Applicant No.1 alleged to be suspecting illicit relationship between her husband and girl from village Karkheli. From the allegations made in the complaint and the complaint lodged by the informant, it can be gathered that the deceased was facing mental and physical harassment at the hands of the accused persons. In order to attract the offence under section 306 of the IPC, there must be an act of abetment as defined under section 107 of the IPC. To bring the case within the purview of

section 306 of the IPC, there must be a case of suicide and in the commission of said offence, the person said to have abetted commission of suicide must have played active role by an act of instigation or by doing certain act to facilitate the commission of suicide. The act of abetment involves a mental process of instigating a person or intentionally aiding that person in doing of such things. It necessarily requires *mens-rea* on the part of the accused to abet the commission of suicide by the deceased. The act of illtreatment and harassment committed on the part of the accused without any intention to aid or instigate a person to commit suicide not constitutes an act of abetment to commit suicide on the part of such person so as to attract the commission of offence under section 306 of the IPC. The steps taken by a person to end life due to hyper-sensitiveness, mental disturbance or ordinary petulance, matrimonial discord or differences in domestic life, which are quite common to society are not sufficient to attract the offence under section 306 of the IPC.

11. In the instant case, it is case of the prosecution that there was matrimonial discord between the deceased and applicant No.1. Applicant No.1 i.e. wife of the deceased was suspecting illicit relationship of her husband with some girl from his native place. In order to overcome the dispute, the deceased came to stay at her in-laws house. However, the dispute remained unresolved. There used to be quarrel between the deceased and his in-laws. The deceased appears to have left house of his in-laws and came back to stay at his parents' house. Few days prior to the incident, the deceased was abducted and forcibly taken to his in-laws house and caused threats to kill him, if he leaves their place. Due to this reason the deceased claimed to be acting under tension and committed suicide.

12. Thus, in the facts and circumstances of the case, there is an arguable case to be considered as to whether the allegations made in the FIR are sufficient to

constitute the offence under section 306 of the IPC against the applicants. The investigation in the case is practically completed. No recovery to be made from the applicants. The co-accused i.e. father-in-law and brother-in-law who alleged to have assaulted and threatened the deceased were arrested and released on regular bail. In the facts and circumstances of the case, custodial interrogation of the applicants is not required. The grant of anticipatory bail to the applicants would not hamper on-going investigation. I am, therefore, of the view that the applicants be extended protection under section 438 of the Cr.P.C.

13. In view of above, I am inclined to allow the application and confirm the interim bail granted by order dated 22.10.2020. Accordingly, the following order is passed :-

O R D E R

- i. The application is allowed.
- ii. The interim bail granted vide order

dated 22.10.2020 is confirmed and made absolute on same terms and conditions with additional condition that the applicants shall attend Police Station, Dharmabad, Dist.Nanded, as and when directed by the Investigating Officer and co-operate in the investigation.

iii. It is clarified that the observations made in the order are prima facie observations made for limited purpose of deciding the present application. None of the observations made to be treated as expression of view of this Court as to merit of case of prosecution against the applicants.

[V.L.ACHLIYA, J.]