

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 874 OF 2019

Smt. Hemlata Wd/o Arun Raut .Vs. State of Maharashtra, through PSO, PS,
Rajapeth, Tah. and Dist. Amravati.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Anil Maridkar, Senior Advocate with Mr. S.G. Joshi, Advocate for
applicant.

Mr. V.A. Thakare, A.P.P. for non applicant-State.

Mr. S.P. Dharmadhikari, Senior Advocate with Mr. U.P. Dable, Advocate
for complainant.

CORAM : V. M. DESHPANDE, J.

DATED : FEBRUARY 11, 2020.

CRIMINAL APPLICATION (APPP) NO. 106 OF 2020

This is an application filed on behalf of the
first informant – Chandrakant s/o Marotrao Raut to
assist the learned Additional Public Prosecutor through
his Advocate.

For the reasons stated in the application, the
application is allowed.

The application is disposed of.

CRIMINAL APPLICATION (ABA) NO. 874 OF 2019

This is an application for pre-arrest bail.

Heard Mr. Anil Maridkar, learned Senior
Counsel for the applicant, Mr. S.P. Dharmadhikari,
learned Senior Counsel for the complainant and Mr.

V.A. Thakare, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed on behalf of the prosecution.

The applicant is apprehending her arrest in connection with Crime No.740/2019 registered with Police Station, Rajapeth, Amravati for an offence punishable under Sections 306, 504 and 506 of the Indian Penal Code (IPC).

Arun Raut, husband of the applicant committed suicide on 26.11.2019 by jumping in front of running train in between Bandnera to Amravati. As per the reply, incident of jumping occurred near Saturna village. On the very same day an Accidental Death No.78/2019 came to be registered. At the time of inquest panchanama a suicide note was found on the person of the deceased. The suicide note, which is duly signed by the deceased, shows that nobody is responsible for his act which curtailed his life. It appears that the investigating officer, therefore, registered a case vide accidental death under Section 174 of the Code of Criminal Procedure.

After this, Mr. Chandrakant Raut, father of deceased Arun lodged written complaint with the Police Station Officer, Rajapeth, Amravati. Date of the said written complaint is 02.12.2019. On receipt of such written complaint,, Police Station Officer, Rajapeth

registered Crime No.740/2019 against the applicant for the offence punishable under Sections 306, 504 and 506 of the IPC.

The written complaint discloses that marriage between the deceased and the applicant was performed on 23.12.1996. Thus the occurrence of suicide is after about 23 years from the marriage. During the submissions, learned Senior Counsel for the applicant would submit that marriage between the applicant and the deceased was a love marriage and both are belonging to different caste. Learned Senior Counsel for the complainant concur with the said statement made by the learned Senior Counsel for the applicant.

The complainant discloses that the applicant is working as a Teacher at one Gajanan Maharaj Education Society.

The sum and substance of allegations made in the written complaint by the father of the deceased Arun is that there used to be quarrel in between deceased and applicant on trifle issues and she used to abuse the deceased. She is a hot tampered lady. It is also not in dispute that the couple was not having any child from the marriage though various efforts were taken. Even attempts were made by taking modern technology of Test Tube Baby. As per complaint, on

15.06.2018, the applicant had left the house and therefore, a report was lodged to that effect. The complaint would show that they gathered information from the unknown person that the applicant had left for Nashik. The complaint did state that complainant gathered information that deceased was having knowledge about the extra marital relations with some unknown person. The complainant therefore, alleges that due to such act on the part of the applicant, complainant's son curtailed his life by jumping himself in front of running railway. During the course of submissions, it surfaces and which is also not disputed that during the life time of Arun, complainant instituted a civil suit not only against the applicant but also against the deceased. The said suit is for declaration and injunction. The prayer in the said suit was as under:

“(1) It be declared that defendants are having absolutely no right or authority to enter into or remain on the suit property described in paragraph no.1.

(2) Issue an order of permanent prohibitory injunction thereby restraining the defendants from entering into the suit premises or remaining on the suit premises causing any obstruction to the peaceful possession and the enjoyment of the suit property by the plaintiff.”

Perusal of the plaint would show that the suit property is a house bearing municipal House No.441

situated at locality by name Namuna of Amravati. At the bar, a statement is made by both the learned Senior Counsel that suit was decreed ex-parte against both inclusive of the deceased.

The FIR is belated one. Complaint is written complaint. No explanation is offered in the written report about lodging the complaint at belated stage. Of course, it will be always open for the complainant to give plausible explanation even during the course of the trial. However, in view of the fact that the suicide note does not attribute any role whatsoever in nature against the present applicant. At least while considering the application for anticipatory bail by the applicant, the delay has its own importance.

On 20.11.2019, interim protection was granted by this Court on a condition that applicant shall attend the police station. Accordingly the applicant did attend the police station and joined the investigation. As per the reply filed on behalf of the prosecuting agency, one SIM card and one cellphone is already seized from the applicant. However, the reply would show that one another SIM card and cellphone is yet to be recovered from the applicant and her custodial presence is required for taking voice sample. For that learned Senior Counsel for the applicant invited my attention to the additional affidavit filed on behalf of the

applicant in which on oath it is stated that her one cellphone was lost/misplaced long back and the said SIM card was blocked by the service provider and the said cellphone number is now allotted to another person.

This particular aspect can very well be vouched by the investigating officer from the service provider and therefore, merely because complaint for misplacing the cellphone was not lodged by the applicant, in my view, cannot be considered as an adverse circumstance against the applicant.

By various authoritative pronouncements, the Hon'ble Apex Court has laid down the law that the nature of the acts or omission on the part of the person who faces charge of abetment should be such that no one can deduce any other inference but it must show conclusively the finger of guilt towards such person.

In my view, the fact that not mentioning anyone's name in the suicide note has its own importance while considering the pre-arrest bail.

During the course of submissions, learned Senior Counsel for the applicant on the instructions from the applicant makes a statement that she is ready to give her voice sample to the investigating officer.

In that view of the matter, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.740/2019 registered with Police Station, Rajapeth, Amravati for an offence punishable under Sections 306, 504 and 506 of the Indian Penal Code, applicant – Smt. Hemlata Wd/o Arun Raut be released on bail on she executing P.R. bond in the sum of ₹10,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed to attend Police Station, Rajapeth, Amravati from 12.02.2020 to 15.02.2020 and shall be with the investigating officer from 03:00 p.m. to 07:00 p.m. During this period it shall be open for the investigating officer to obtain the voice sample of the applicant.

The application is disposed of.

JUDGE