

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

914 BAIL APPLICATION NO.189 OF 2021

Namdev Hanuman Naibal ..Applicant

Versus

The State of Maharashtra ..Respondent

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Mrs. Aslesha Kulkarni h/f Mr. S.J. Salunke, Advocate for the Applicant.

Mr. N.T. Bhagat, APP for the Respondent/State.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 04th MARCH, 2021**

PER COURT:-

1. Present applicant has been arrested on 25.01.2021 in connection with Crime No.16 of 2021 registered with Majalgaon (Rural) Police Station, District Beed, for the offence punishable under Sections 306, 323, 504, 506 read with 34 of the Indian Penal Code. Present application has been filed under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Ms. Aslesha Kulkarni holding for Mr. Salunke for the applicant and learned APP Mr. Bhagat for the respondent-State. In order to cut short it can be said that both the learned Advocates have made submissions in support of their respective contentions.

3. It can be seen that the FIR has been lodged by one Ganesh Pandurang Shinde in respect of suicide by one

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Shahadev Bhausahab Pawar. The informant is the cousin brother of the deceased. It has been stated in the FIR that the incident had taken place on 23.01.2021 at about 05.30 pm, when he had gone along with the present applicant and one Vivek Sonawane to take deceased Shahadev to home. Deceased was resident of village Lavud no.1 and deceased was to be fetched from Majalgaon bus stand. Deceased was under the influence of liquor but then he had objected the presence of the present applicant and refused to come along with them and he went away separately. Informant came to know about suicide committed by Shahadev around 09.30 am on 24.01.2021. He went to the spot where police had already arrived. At the time of drawing inquest panchnama, they found a chit in the pocket of the deceased in which he had made allegations against the present applicant and then it appears that the FIR has been lodged by Ganesh Pandurang Shinde.

4. Perusal of the police papers would show that the FIR is lodged against the present applicant as well as one Bhausahab, who is father of the deceased. Statements of witnesses does not show by any stretch imagination that there would have been a common intention between the present applicant and father of the deceased to instigate the deceased to commit suicide. In order to attract the provisions under Section 306 of the Indian Penal Code, instigation as

contemplated under the provisions of Section 107 of the Indian Penal Code are necessary. Merely because something is written in the suicide note, that does not mean that there is instigation. Even if for the sake of arguments we consider the said suicide note, then as regards the present applicant is concerned, he states that the present applicant used to give him phone calls and used to torture. No details have been given and what kind of torture i.e. the acts amounting to torture have been written in the said note. In the chit, it is also stated about the incident dated 23.01.2021 which had taken place at bus stand at Majalgaon and for which the informant was the witness. He thereafter states that his father is also responsible for his suicide. Further he says that on the say of the present applicant, his father had assaulted his mother and the dispute is going on since 19.01.2021. He also says that the present applicant had given him threat to kill. All the witnesses whose statements have been recorded have consistently stated that the deceased was addicted to liquor, but still at the time of writing suicide note, he has specifically mentioned that he is in conscious state. But, if we consider the contents of the note then one sentence has no connection with another sentence. The postmortem report shows the ligature remark and the cause of death is due to hanging. In respect of contents of the stomach, it is stated that it had 60 ml fluid but since it had no peculiar smell, it appears that the viscera was

not preserved. Even if for the sake of arguments we accept that deceased had not consumed liquor when he committed suicide, yet, contents of the suicide note do not show any instigation. It can be seen from the statement of the wife of deceased that they got married in the year 2017, however, after the lock-down, her husband came back to the village from the workplace Wagholi, Pune. Thereafter, he was not doing any work but used to consume liquor daily. He was not returning home for about 4 days. Everybody had told him to leave his vice, but he has not shown any improvement. She had gone to her parental house when she came to know about the death of her husband by suicide. She has not stated that at the instance of present applicant, her father-in-law had assaulted her mother-in-law. Statement of mother of deceased is also on the same line. She has not stated that she was ever assaulted by her husband, who is co-accused on the basis of instigation by the present applicant. Therefore, taking into consideration all the facts and the evidence collected upto now, the present applicant deserves to be released on bail. Hence, the following order is passed:

ORDER

- I) The application stands allowed.
- II) The applicant viz. Namdev Hanuman Naibal arrested in connection with with Crime No.16 of 2021 registered with Majalgaon (Rural) Police Station, District Beed, for the offence

punishable under Sections 306, 323, 504, 506 read with 34 of the Indian Penal Code, be released on P.R. Bond. of Rs. 15,000/- (fifteen thousand) with one solvent surety in the like amount.

III) The applicant shall attend the concerned police station once in a week between 10.00 am to 12.00 pm till filing of charge sheet.

IV) The applicant shall not tamper with the evidence of the prosecution in any manner and shall cooperate with the investigation.

V) The applicant shall not indulge in any criminal activity.

VI) Bail before the trial Court.

(SMT. VIBHA KANKANWADI, J.)