

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

945 APPLICATION FOR CANCELLATION OF BAIL NO.68 OF 2020

VIJAY S/O. SARJERAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Applicant : Mr. Nimbalkar, h/f Mr. Adhe Ratan L.

APP for Respondent No. 1 : Mr. S.W. Mundhe.

Advocate for Respondents No. 2 to 6 : Mr. S.B. Ghute.

CORAM : MANGESH S. PATIL, J.

DATE : 02.02.2021.

PER COURT :

The learned advocate for the respondent Nos. 2 to 6 submits that as per the order dated 15.12.2020 he has deposited the cost of Rs. 1000/- in the Office.

2. The original informant has preferred this application under sub Section 2 of Section 439 of the Code of Criminal Procedure being aggrieved and dissatisfied by the order passed by the learned Additional Sessions Judge -1 Jalna granting anticipatory bail to the respondent Nos. 2 to 6 in connection with Crime No. 192/2020, registered with Police Station Mantha, District Jalna for the offences punishable under Sections 306, 504, 506 read with Section 34 of the Indian Penal Code.

3. The learned advocate for the applicant submits that the learned Additional Sessions Judge has granted anticipatory bail without application of mind. It is evident from first paragraph of the order which mentions various other sections of the Indian Penal Code which are not invoked by the investigating machinery. He would further point out that in spite of the fact that the prosecution was opposing the application for anticipatory bail and had submitted that the investigation was in progress, without there being any concrete material the learned Additional Sessions Judge has made an

observation that the investigation was almost done. The observation is clearly perverse and arbitrary. The learned Additional Sessions Judge has exercised the discretion when he ought not to have, in granting anticipatory bail. The offence is serious. The deceased was cheated by the respondent Nos. 2 to 6 who had promised to secure a job for his son and had recovered money. They were also threatening the deceased when he had filed a complaint with police alleging about their criminal activity. All these circumstances clearly indicate that the respondent Nos. 2 to 6 have instigated the deceased to commit suicide. The impugned order does not stand on merits and being perverse and arbitrary is liable to be interfered with.

4. By referring to the decision in the case of **Dinesh M. N. (S.P) Vs. State of Gujrat; 2008 AIR (SC) 2318** the learned advocate for the applicant would further submit that the learned Additional Sessions Judge has not taken into consideration the relevant factors and has resorted to some irrelevant factors and the impugned order is illegal.

5. The learned advocate for the applicant would lastly point out that in fact the incident had taken place on 03.06.2020 and the learned Judge in the impugned order passed on 12.06.2020 had concluded that the investigation was almost over. The observation is arbitrary and the impugned order be quashed and set aside and the bail be cancelled.

6. The learned advocate for the respondent Nos. 2 to 6 submits that bail has been granted taking into consideration the facts and circumstances of the case. The observations made by the learned Additional Sessions Judge clearly indicate that he has taken a plausible view. It is a matter of abetment of suicide punishable under Section 306 of the Indian Penal Code. Even if the allegations are taken at their face value, no intention to lead the deceased to commit suicide is attributable to the respondent Nos. 2 to 6. They are ready to cooperate the Investigating Officer. There are no

allegations about they having committed any breach of the terms and conditions subject to which they were granted bail. The discretion exercised by the learned Additional Sessions Judge may not be substituted by this Court.

7. I have carefully gone through the papers and the impugned order. It is quite apparent that there is indeed an error apparent in referring to various sections of the Indian Penal Code which are not being invoked against the respondent Nos. 2 to 6 about which there is a reference in paragraph No. 1 of the order. It is also apparent that though the prosecution was opposing the application for anticipatory bail and even it was submitted that the investigation was in progress, the learned Judge seems to have taken a frogs' leap in the realm of conclusion in observing that the investigation was almost over. However, simply on the basis of these circumstances can it be said to be wrong exercise of the discretion by the learned Additional Sessions Judge.

8. It is to be borne in mind that the offence being investigated is one for abetment of suicide of the deceased. Needless to state that abetment as has been defined under Section 107 of the Indian Penal Code could comprise of three aspects, instigation, intentional aid or conspiracy. Going by the allegations, even if one tends to assume the contents of the suicide note to be true and correct that would lead to the only conclusion that the respondent Nos. 2 to 6 had recovered some money from the deceased under the promise of securing a job to his son and though the job was secured, his son was removed from the job after one year of service. Conspicuously, this episode is stated to have taken place in the year 2011 whereas the deceased has committed suicide in the year 2020.

9. Again, going by the suicide note it appears that the deceased had made some complaint to the police attributing the respondent Nos. 2 to 6 with some misdeeds in connection with loans taken from the banks by

various persons and on that count they were threatening him. Accepting these allegations at their face value, one cannot conclude as to how this would fit in the definition of abetment under Section 107 of the Indian Penal Code.

10. Pertinently, going by the suicide note, the deceased was having mental stress for couple of other reasons and had a grievance against two other persons namely Ramesh Bhimrao Rathod and Babu Chavan. He has also spoken about separate incidents touching each of them. All these persons are simultaneously being charged for abetting the suicide. Apparently, there are no allegations in the suicide note or being put forth by the prosecution to bring about any nexus between the role attributed to the respondent Nos. 2 to 6 on the one hand and the other two accused persons independently against whom the deceased had a grudge. All these persons are being roped in for abetting the suicide by resorting to section 34 of the Indian Penal Code.

11. Though in a cryptic manner, for the self same reason in paragraph No. 5 of the impugned order the learned Additional Sessions Judge has come to a plausible conclusion that the allegations would not constitute abetment of suicide. The view taken by the learned Additional Sessions Judge being a plausible view, it cannot be said that the impugned order suffers from any arbitrariness or capriciousness.

12. The Application is rejected.

13. It is made clear that the observations made herein are restricted to the decision of the present application and the Trial Court shall not get influenced by those.

(MANGESH S. PATIL, J.)

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