

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 760 of 2020

1. Sham s/o Venusingh Pawar,
Age : 50 years, Occu. Agri.,
R/o Near Sevalal Mandir, Kondari,
Mahagaon, Yevatmal

2. Balu s/o Uttam Pawar,
Age : 32 years, Occu. Agri.,
R/o Near Sevalal Mandir, Kondari,
Mahagaon, Yevatmal

APPLICANTS

VERSUS

1. The State of Maharashtra,
through the Police Sub-Inspector,
Police Station, Dharur,
District Beed

2. The Superintendent of Police,
District Beed

RESPONDENTS

Mr. Zaidi Ali Zeeshan M., Advocate for the applicants
Smt. R.P. Gaur, A.P.P. for the respondents/State

CORAM : MANGESH S. PATIL, J.

DATE : 15.01.2021

PER COURT :

Heard both the sides.

2. This is an application under Section 438 of the Code of Criminal Procedure as the applicants are apprehending their arrest in

connection with Crime No.7/2020 registered with Police Station, Dharur, District Beed for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

3. Shortly stated, the allegations are to the effect that the deceased was a labour contractor. He had taken some advance from the sugar factory undertaking to provide the labourers. In turn, he is stated to have paid some advances to these applicants and the other accused, but since the latter failed to obey the promise and provide labourers, the deceased was under tremendous stress. Besides, one person had committed suicide to whom the deceased had advanced money and he was being threatened of the consequences on the allegations that the person had committed suicide because of the deceased herein.

4. The learned Advocate for the applicants submits that accepting the allegations at their face value, it will not constitute abetment as defined under Section 107 of the I.P.C. Mere failure to repay the money or to keep the promise to provide the labourers will not constitute abetment. He would further submit that all the persons to whom the deceased had paid advances are now being attributed with such abetment. At the most, it would constitute a civil liability. The applicants are labourers. They are ready to cooperate the Investigating Officer and the ad-interim relief granted to them may be confirmed.

5. The learned A.P.P. opposes the application. She submits that at this juncture, the material cannot be scrutinized to ascertain its veracity or otherwise. A person has lost his life. There is evidence to show that he had advanced money to the applicants and the other accused. A diary was maintained by him, which has been recovered. A statement of the informant, who happens to be the widow of the deceased, has been recorded under Section 164 of the Code of Criminal Procedure, wherein she has specifically stated that the accused persons were harassing the deceased on phone and fed up with such harassment, he committed suicide. She has also stated that the applicants are harassing her and her relations. Since the matter is under investigation, custodial interrogation of the applicants is necessary and the application may be rejected.

6. I have carefully gone through the papers of investigation. As can be gathered from the FIR and the statement of the informant recorded under Section 164 of the Cr.P.C., the only reason that can be perceived to be the immediate cause for the deceased to commit suicide is that he was unable to engage labourers for which he had taken advance from the sugar factory. It is alleged that he had, in turn, given some money by way of advance to the applicants and the other accused and they had failed to provide the labourers. Accepting this at its face value, mere failure on their part to keep the promise, prima facie, cannot constitute abetment as defined under Section 107 of the I.P.C. It cannot be an instigation or intentional aid much

less a conspiracy.

7. Though the informant, in her statement, has stated that the applicants are harassing her, in all probability, the context in which the statement is made, pertains to some post suicide event.

8. Considering all the aforementioned facts and circumstances, the application deserves to be allowed.

9. The application is allowed. The ad-interim relief granted by the order dated 10.09.2020 stands confirmed with the same terms and conditions.

[MANGESH S. PATIL]
JUDGE

npj/ABA760-2020