

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

**7 ANTICIPATORY BAIL APPLICATION NO.760 OF 2021
WITH
APPLN/1564/2021
IN
ABA/760/2021**

Pratap S/o Bhagawan Nimarot
Age; 28 years, Occ; Service,
R/o; Pasodi, Tq. Jafrabad,
Distrit; Jalna

...Applicant
(Orig. Accused)

VERSUS

The State of Maharashtra
At the instance of Jafrabad Police
Station, Tq. Jafrabad,
District; Jalna.

...Respondent

...
Advocate for Applicant : Mr.Lute Sandeep N.
APP for Respondent-State : Mrs. D.S.Jape
Advocate for the Complainant : Mr. A.V. Lavte h/f Mr. S.J. Salunke
(Assist to learned APP)

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CORAM : SANDEEP K. SHINDE , J.

**Reserved on : 29.07.2021.
Pronounced on : 06.08.2021**

ORDER :

1. Apprehending the arrest in connection of Crime No. 151 of 2021, registered at Jafrabad Police Station, District Jalna, for the offences punishable under Sections 306, 498-A, 323, 504, 506 of Indian Penal Code ('IPC' for short), and Section 3 and 4 of the Dowry

Prohibition Act, the applicant seeks pre-arrest bail.

2. Applicant married to deceased way back in the year 2014. Out of wedlock, a daughter was born, who is 5 years old. Applicant's wife committed suicide on 22nd June, 2021 at her matrimonial home. Soon thereafter, her brother lodged First Information Report ('FIR' for short). He would allege that his sister was subjected to the harassment by her husband and in-laws, with a view to coerce and pressurize her to meet their unlawful demands of property and valuables. The First Information Report indicates, although the applicant was away from matrimonial home at Delhi, being a member of CIF Force, the telephonic conversation produced by the prosecution with a certificate under Section 65-B of the Evidence Act, suggest and implies that the applicant was intending to perform second marriage and was insisting the deceased to accord her consent, which according to prosecution left the deceased with no option but to end her life.

3. The deceased married to applicant seven years ago and a daughter was born out of the wedlock, who is 5 years old today. Applicant joined para-military force in the year 2018 and it appears, till then, there were no complaints by the deceased either against the applicant or in-laws. However, it appears from the record that the applicant and the deceased were talking on mobile frequently.

Although the conversation between the applicant and the deceased has been relied on by the prosecution to contend that since the applicant was allegedly insisting and persuading the deceased to give consent to perform second marriage and it prompted the deceased to commit suicide, however, in my view, it cannot be said, the applicant abetted commission of suicide.

4. Apex Court in the case of **Shabbir Hussain Vs. The State of Madhya Pradesh and Ors. in Special Leave to Appeal (Cr1.) No (s). 7284 of 2017** has held that

“In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [**Amalendu Pal Vs. State of West Bengal (2010) 1 SCC 707**]

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [**Chitresh Kumar Chopra V. State (Government of NCT of Delhi) (2009) 16 SCC 605**]”

5. Since marriage till 2018, as it appear from the investigation, that there were no disputes and differences between the deceased and the applicant. It is only after the applicant had joined the para-military forces at Delhi, the allegations of unlawful demand cropped up and surfaced in FIR in 2021. In the next place, telephonic conversation relied on by the prosecution apparently may not constitute, a positive action on the part of the applicant as an act of instigation. On the face of the report, the allegations fall short of the ingredients of Section 107 of the Indian penal Code. In the contemplation of the facts of the case, in my view, custodial interrogation of the applicant may not further the prosecution case.

6. Apart from that the applicant, being a member of para-military forces, his presence for the investigation and trial can be secured by imposing suitable conditions. Hence the applicant is released on bail on following terms :

7. (i) In the event of arrest of applicant in connection Crime No. 151 of 2021, registered at Jafrabad Police Station, District Jalna, for the offences punishable under Sections 306, 498-A, 323, 504, 506 of Indian Penal Code ('IPC' for short), and Section 3 and 4 of the Dowry Prohibition Act, he shall be released on bail on executing P.R. bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) with one or more sureties in the like amount.

ii) The applicant shall join and co-operate in the investigation as and when called by the Investigating Officer.

(iii). The applicant shall report to the Investigating Officer, on 9th 12th, 17th and 20th August, 2021, in between 11:00 a.m. to 1:00 p.m. and thereafter as and when called by the Investigating Officer.

8. Application is allowed and disposed of in aforesaid terms. Consequently Criminal Application No. 1564 of 2021 (assist to learned APP) is also disposed of.

(SANDEEP K. SHINDE)
JUDGE

mahajansb/