

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

ANTICIPATORY BAIL APPLICATION NO. 834 OF 2021

1. Vaibhav s/o Vijay Kulkarni,
Age : 28 years, Occu. Private Service,
R/o. Hasegaon, Tq. Kallam,
Dist. Osmanabad, at present Pune.

2. Ganesh s/o Trimbak Sawat,
Age : 27 years, Occu. Private Service,
R/o. Khamaswadi, Tq. Kallam,
Dist. Osmanabad, at present Pune.

...Applicants

Versus

The State of Maharashtra & Anr.

...Respondents

.....
Mr. G. N. Kulkarni, Advocate for the applicants
Mrs. Vaishali S. Choudhari, APP for respondents / State
.....

**CORAM : V. G. BISHT, J.
DATED : 25th August, 2021**

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0158 of 2021, registered with Shirdhon Police Station, District Osmanabad for the offences punishable under Section 306 r/w 34 of the Indian Penal Code.

2. It is the case of the prosecution that the informant's son namely, Santosh (since deceased) and his partners i.e. present applicants had decided to start cattle feed factory in Khamaswadi shivar and said factory was named as Dharashiv Gro. All of them were expected to invest Rs. 4.00 lakhs, each. The applicants were not making payment of their share of investment. The informant sold his land and gave moneys to the deceased, who invested the same in the project and completed the basement of the factory. Even the applicants were avoiding to work together. Applicants Vaibhav and Ganesh were required to pay outstanding amount of Rs. 2.5 lakhs and Rs. 1.00 lakh, respectively. The prosecution alleges that the applicants were avoiding to pay the remaining amount and were harassing the deceased. Ultimately, on 02.07.2021, the deceased committed suicide by hanging himself to a tamarind tree.

3. Mr. G. N. Kulkarni, learned Counsel for the applicants, vehemently submitted that even if the allegations made in the FIR are taken at their face value and accepted in their entirety, the case against the present applicants cannot be said to have been made out *prima facie*. There is no material on record to show that the applicants

abetted the deceased to commit suicide. In such circumstances, the present application deserves to be allowed, urged learned Counsel.

4. Mrs. Vaishali S. Choudhari, learned APP, on the other hand, opposed the submissions by contending that the applicants were not making the payment of outstanding amount to the deceased and rather they were harassing the deceased leading to commit suicide. The said outstanding amount was standing in the names of the applicants pursuant to the agreement between them of raising a factory of cattle feed. The learned APP also produced a suicide note which is seized during the course of investigation. In such circumstances, there being no merit in the application the same be rejected, argued learned APP.

5. At the very outset, there is no dispute to the fact that the deceased committed suicide by hanging himself to a tamarind tree. From the post-mortem report, it is clear that the probable cause of death was 'Asphyxia due to hanging'. The only point canvassed before me by the learned APP is that since the deceased was subjected to harassment by applicants, he committed suicide. To understand this, one is required to go through the contents of the FIR first. Except the word harassment, there is nothing in the FIR to suggest that it were

the applicants, who, in any manner, instigated or abetted the commission of suicide. Vague allegations of harassment is given in the FIR. It is not made clear as to how and in what manner the applicants kept deceased irritating or annoying by words, deeds or wilful omission or conduct which amounted to abetment. There is nothing in the FIR to show that the applicants at any point of time provoked, urged or encouraged the deceased to commit suicide.

6. Coming to the suicide note, it shows that both the applicants made him emotional and further made him invest in the company and when work was stopped, they abandoned him. Both the applicants were owing some amount towards him and despite repeated demands, they did not pay the same. The suicide note further recites that since despite repeated demands, the applicants did not pay the amount, he is committing suicide.

7. In my considered opinion, the recitals in the alleged suicide note will not *prima facie* cover Section 306 of the IPC. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Needless to say, the act of suicide of deceased would fall short of the offence of abetment.

8. In view of above, in my considered opinion, the applicants have made out a case for consideration. Hence, following order.

ORDER

- i. The application is allowed.
- ii. Interim relief granted by this Court on 02.08.2021, is confirmed and made absolute.

**[V. G. BISHT]
JUDGE**