

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.963 OF 2021**

Shantanu Laxman Nimbalkar .. Applicant

Vs.

The State Of Maharashtra .. Respondent

Mr. Sudip Pasbola with Karl Rustum Khan, Advocate for
Applicant.

Mr. S. R. Agarkar, A.P.P. for the State-Respondent.

**CORAM : PRAKASH D. NAIK, J.
DATE : 16th JULY, 2021**

PC.

1. This application for bail is preferred in connection with C.R. No.27 of 2019 registered with Mahad City Police Station for the offence punishable under Sections 376 (2)(n), 306, 420 of Indian Penal Code (for short "IPC"). The FIR was registered on 11.02.2019.

2. This is second application for bail before this Court. The previous application was disposed of vide order dated 17.02.2020. The order indicates that, since the Court was not inclined to grant bail, the application was withdrawn.

3. The first informant is the father of the victim girl. She was pursuing her studies in M.Sc. at Mithibai Collage, Vile Parle, Mumbai. She was residing with her aunt at Ghatkopar. On 05.10.2018 complainant received phone call from Vashi Railway Police Station that his daughter has met with an accident. She

was admitted to hospital for treatment. The complainant and his relatives reached the hospital. He was informed that while the victim was travelling from train from Vashi to Mankhurd, she fell down. It was disclosed by doctors that the victim was carrying pregnancy of six months. On search of the bag of the victim, letter written by her was found. In the said letter, it was stated that the victim was pregnant from the applicant. They tried to abort the foetus but could not succeed. The applicant/accused was not willing to marry her and hence she is committing suicide. She has held applicant responsible for her death. Pursuant to registration of FIR, the investigation proceeded. The applicant was arrested. DNA report was obtained which opined that the applicant and victim girl were biological parents of femur bone of foetus of victim. On completing investigation, charge-sheet was filed.

4. Learned counsel for the applicant submitted that though the previous application was rejected by this Court vide order dated 17.02.2020, there is no progress in the trial. Applicant is arrested on 11.02.2019. The alleged relationship between the applicant and the victim girl was of consensual nature. The suicide note itself mentioned that both had attempted to abort foetus but they could not succeed. The suicide was committed on account of frustration that the child could not be aborted. Section 306 of the IPC is not attracted in this case. Learned Sessions Court while rejecting the application for bail had

observed that the applicant was also involved in another case registered for offence under Sections 376(2)(N), 506 read with Section 34 of the IPC. The FIR in the said case reflects that the relationship with the complainant therein was of consensual nature. The applicant is in custody for a period of about two and half years. Further custody is not necessary.

5. Learned APP submitted that the applicant was in relationship with the victim girl. She was young girl pursuing studies in M.Sc. at Vile Parle, Mumbai. Suicide note implicates the applicant. The victim has held the applicant responsible in the suicide note. The applicant had physical relationship with the victim girl and did not perform marriage with her which compelled her to commit suicide. The applicant has abetted the victim girl to commit suicide. Another FIR was registered against the applicant with Mahad City Police Station vide C.R. No.49 of 2017. The said FIR was registered on 10.07.2017. Thereafter, the applicant developed relationship with the victim in the present case. He is habitual offender. In both the cases, the applicant had made false promise of marriage and induced the victims to maintain physical relationship with him. The suicide note as well as chats exchanged by the victim clearly show that the applicant had cheated the victim. He has compelled victim to commit suicide.

6. I have perused the documents on record. The victim was student of M.Sc. She was aged around 21 years. It is apparent

that the victim and applicant were in relationship. The suicide note was recovered from the bag of the victim. The suicide note mentioned that the victim was pregnant for six months from applicant. She thought that the accused would accept the situation and would find out solution or perform marriage with her. She did not disclose this relationship to the parents. She tried to abort foetus. She had parted the amount which she was having to accused. She was expecting that the accused would help her and save her from difficult situation. However, that did not happen. The Doctor was not willing to carry out abortion. If the accused had helped her, the situation in which she was caught up would not have arisen. She had insisted that they should disclose about the relationship and perform marriage. But the accused was not willing to do so. She was in love with the accused. To avoid harm to reputation of family, she kept quiet. The accused should be punished for the act committed by him. He should realise as to how the victim would bear such trauma. The DNA report mentioned that the applicant is the biological father of the foetus. The chats which are part of the charge-sheet exchanged between victim girl and the person through whom she was trying to contact the applicant, indicate that she was continuously and desperately trying to contact the applicant. The statements of close associate of the applicant, namely, Avinash Gaikwad were recorded. The tenor of said statements would indicate that the applicant had completely shown disinclination to go ahead with the victim. The applicant

left her alone. It is apparent that the applicant had promised her that he would perform marriage and after she had conceived, he completely ignored the promise. He avoided her.

7. Prior to the present case, FIR was registered on 10.07.2017 against the applicant by another victim vide C. R. No.49 of 2017 for offences under Section 376(2)(n), 506, 34 of the IPC. The victim in the said case had alleged that applicant got acquainted with her in 2016 on Facebook. He promised her marriage and established physical relationship and then threatened her that she would be defamed in society. He was arrested. Apparently, granted bail. Thereafter, the applicant developed acquaintance with the victim in this case.

8. In the case of **Chitresh Kumar Chopra Vs. State (Government of NCT of Delhi) (2009) 16 SCC 605**, the Supreme Court has observed that, to constitute, “instigation”, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or “urging forward.” The dictionary meaning of the word “goad” is a thing that stimulates someone into action, provoke to action or reaction to keep irritating or annoying somebody until he reacts. Similarly urge means to advice or try hard to persuade somebody to do something or to make a person to move quickly and or in a particular directions, especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or urge forward the latter with intention to

provoke, incite or encourage the doing of an act by the latter. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self. It is further observed that in that case, apart from suicide note, statements recorded by Police during investigation, tend to show that on account of business transactions with accused, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. Prima facie conduct of accused was such that deceased was left with no other option except to end his life. In the case of **Pravin Pradhan Vs. State of Uttaranchal & Anr. (2012) 9 Supreme Court Cases 734**, the deceased had left suicide note. The complainant had alleged that accused had long been attempting to compel the deceased to indulge in several wrongful practices was not comfortable with complying with such orders and as a consequence, the appellant started making illegal demands and as the same were not fulfilled, he began to harass and insult the

deceased at regular intervals. On one occasion, deceased was disgraced in presence of staff by stating that, “had there been any other person in his place, he would have died by hanging himself. The apex Court referred to decision in the case of Madan Mohan Singh (Supra) and several other decisions. It was further observed that, instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide.

9. Considering factual aspects of this case, no case for grant of bail is made out.

ORDER

- (i) Bail Application No. 963 of 2021 stands rejected.
- (ii) Trial expedited.

(PRAKASH D. NAIK, J.)