

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2401 OF 2019

Janardhan S/o. Sheshnarayan Upadhyay
Adult, Indian Inhabitant, aged 50 years,
Residing at Mahalaxmi Chawl, Waghoba Nagar,
Kalwa (E), Dist. Thane 400 605. ...Applicant

vs.

The State of Maharashtra through
Inspector Incharge, Kalwa Police Station,
To be served through Public Prosecutor,
High Court, Mumbai ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 211 OF 2020

Satish Janardan Upadhyay
Adult, Indian Inhabitant, aged 20 years,
Residing at Mahalaxmi Chawl, Waghoba Nagar,
Kalwa (E), Dist. Thane 400 605. ...Applicant

vs.

The State of Maharashtra through
Inspector Incharge, Kalwa Police Station,
To be served through Public Prosecutor,
High Court, Mumbai ...Respondent

Mr.Ashok M. Saraogi for applicant in both applications.
Mr. Arfan Sait, APP for State.

CORAM : N. J. JAMADAR, JJ.
DATE : 7th AUGUST, 2021

P.C.:

1. Mr.Janardhan, the applicant, in Anticipatory Bail Application
No. 2401 of 2019, is the father of Mr. Nitesh. Mr. Satish, the

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applicant in Anticipatory Bail Application No.211 of 2020, is the brother of Mr. Nitesh.

2. The applicants have preferred these applications for pre-arrest bail in connection with C.R. No.324/2019, registered with Kalwa Police Station, for the offences punishable under sections 306, 498-A, 323 and 504 read with section 34 of the Indian Penal Code, 1860 ('the Penal Code') against the applicants, Mr.Nitesh and the other relatives of Mr. Nitesh, for having subjected Manisha ('the deceased') the wife of Mr. Nitesh to cruelty, caused hurt and insult, and also for having abetted the commission of suicide by the deceased.

3. By an order dated 3rd December 2019, Mr.Janardhan (ABA/2401/2019) was granted interim relief. Whereas, Mr. Satish (ABA/211/2020) was granted interim relief by order dated 27th January 2020. This Court found that the allegations qua the applicants were of general nature. No *prima-facie* case of abetment to commit suicide was made out.

4. I have heard Mr. A.M. Saraogi, the learned counsel for the applicants and Mr. Arfan Sait, the learned APP for the State. The Investigating Officer is not present.

5. Mr. Saraogi submitted that charge-sheet has already been lodged and Mr. Nitesh, the husband of the deceased and Smt. Geetadevi, the mother-in-law of the deceased, who were arrested, have been ordered to be released on bail by this Court. Rest of the relatives of Mr. Nitesh, including the applicants herein, were granted pre-arrest bail. Taking the Court through the charge-sheet and the orders passed by this Court in bail application of Smt.Geetadevi (Criminal Bail Application No.3007 of 2019), dated 4th December 2019, and Nitesh (Bail Application No.281 of 2020), dated 24th February 2020, Mr. Saraogi would urge that the interim pre-arrest bail granted to the applicants deserves to be made absolute. There are no allegations against the applicants which *prima-facie* make out a case of harassment and/or abetment to commit suicide urged the learned counsel for the applicants.

6. Mr. Sait, the learned APP, on the other hand, countered the submissions on behalf of the applicants and would urge that the allegations of harassment qua the applicants, are made out if the F.I.R. is considered in juxtaposition with the suicide note left behind by the deceased and the transcript of the conversations which the

first informant had with the deceased on the very day of the occurrence.

7. I have perused the material on record, the report under section 173 of the Code of Criminal Procedure, 1973 ('the Code') and its accompaniments inclusive of the statements recorded under section 164 of the Code. From the perusal of the material, especially the suicide note, it seems that the allegations against the applicants were *prima-facie* of general nature. The deceased asserted that her in-laws were the cause for her death. The allegations referred to the constant quarrels and bickerings. The allegations are primarily against the husband and mother-in-law. The transcript of the conversations between the deceased and the first informant does not attribute a specific role of harassment qua the applicants. Thus, the elements of abetment to commit suicide qua the applicants do not seem to have been *prima-facie* made out.

8. While releasing Geetadevi, the mother-in-law on bail, this Court, by order dated 4th December 2019 (Criminal Bail Application No.3007 of 2019), *inter-alia*, observed as under :-

"7. I have gone through the charge-sheet, and particularly transcript of audio conversation between

the deceased and her brother; statement of deceaseds' mother recorded under Section 164 of the Cr.P.C. and a gist of a suicide note, reproduced in the panchanama.

8. The evidence, prima-facie, does not indicate that the applicant intentionally aided and/or abated Manisha, to commit suicide. Whether, the factum of physical harassment allegedly caused by the applicant and others drove Manisha to commit suicide is question fact, to be established in the trial."

9. The aforesaid observations apply with even greater force, in the case of the applicants. Since the investigation is complete and charge-sheet has been filed, custodial interrogation of the applicants does not seem to be warranted. Moreover, the applicants appear to have roots in society. At this stage, the possibility of tampering with evidence and fleeing away from justice appears to be remote.

10. In the aforesaid view of the matter, I am persuaded to hold that the interim relief granted to the applicants deserves to be made absolute.

11. Hence, the following order :

O R D E R

- (i) The applications stand allowed.
- (ii) Interim relief granted to the applicant-

Janardhan Sheshnarayan Upadhyay (ABA No.2401 of 2019) by order dated 3rd December 2019 is made absolute.

(iii) Interim relief granted to the applicant-Satish Janardhan Upadhyay (ABA No.211 of 2020) by order dated 27th January 2020 is made absolute.

(iv) In addition, the applicants shall regularly attend the Court and co-operate in the expeditious conclusion of the Sessions Case.

(v) It is made clear that the observations hereinabove shall not be construed as an expression of opinion on the merits of the case and the Sessions Court shall decide the Sessions Case uninfluenced by the observations made in the above-referred interim orders and this order.

Both the applications stand disposed of.

(N. J. JAMADAR, J.)