

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2798 OF 2019

1. Sunil Mohanlal Jain
2. Mohanlal Jethmal Jain
Versus
The State of Maharashtra

.... Applicants
.... Respondent

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Ms. K. R. Shah i/b. Rizwan Merchant & Associates for Applicants.
Mr. Ajay Patil, APP for State/Respondent.

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**CORAM : SARANG V. KOTWAL, J.
DATE : 24th SEPTEMBER, 2021**

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.I 352 of 2019 registered at L. T. Marg police station, on 20/11/2019, under sections 306 and 201 r/w. 34 of the Indian Penal Code (for short 'IPC').

2. Heard Ms. Shah, learned counsel for the applicants and Shri. Ajay Patil, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by P.S.I. Shivaji Tambe, attached to L.T. Marg police station. He has stated that, on 21/10/2019, at about 8:45p.m. the applicant No.1 approached the police station and informed that,

their employee Bidhan Aadak had committed suicide in the morning at about 7:45a.m. on that day by hanging himself in his bathroom. The police made inquiries. They came to know that there was some history behind this incident. The applicants were having a jewellery shop by the name Sunil Jewellers. The deceased Bidhan Aadak and one Suresh Puri were working with them. The investigation revealed that the applicants were suspecting that these two employees were committing theft of gold from their shop. The applicants found that the ornaments worth 1100 gms. were stolen and they were sold through the deceased. Some of the amount was kept by Suresh Puri and other amount was given to the deceased Bidhan Aadak. The F.I.R. mentions that the applicants came to know about it on 04/10/2019. Thereafter they beat the deceased and Suresh Puri. Their family members were informed. The applicants had taken some document from Suresh Puri's father. But the deceased Bidhan Aadak did not have any family members who could come to Mumbai to make payment of the stolen articles. After that, the applicants removed the deceased Bidhan Aadak from the employment. It is alleged that the deceased

was facing hardship because of loss of job and he was under the apprehension that even his wife would be harassed by the applicants. It is alleged that, his roommate Viplab Maity had shown two suicide notes written by the deceased before committing suicide. It is alleged that the applicant No.1 had torn those suicide notes. The applicant No.1 himself informed the police about the incident and then this F.I.R. was lodged. All this history is mentioned in the F.I.R. itself.

4. From the record it appears that the applicants were protected by interim order dated 05/05/2020 passed by this court (Coram: Bharati Dangre, J.). It was observed in that order that, there had to be positive element of instigation on the part of accused in the case of offence punishable under section 306 of IPC. Finding that such intent was absent in the present case, interim protection was granted to the applicants since May 2020. In the meantime, the investigation was completed and even the charge-sheet was filed.

5. Learned counsel for the applicants submitted that, at the highest, it can be said that the applicants wanted their gold

ornaments back or wanted compensation for the loss caused, but their act will not amount to abetment to commit suicide. She further submitted that, custodial interrogation of the applicants is not necessary, particularly, when the charge-sheet is already filed.

6. Learned APP opposed this application. He submitted that the charge-sheet contains copies of the suicide notes which were torn by the applicant No.1. The roommate of the deceased had taken photograph of those suicide notes in his mobile phone. I have perused those suicide notes. The first suicide note does not refer to the applicants at all. In the second suicide note, it is mentioned that his employer was responsible for his death and the employer should pay Rs.1 crore to his wife. He has not elaborated any other aspect. As observed in the interim order by this court, the evidence about the positive act on the part of the applicants attracting provisions of section 306 r/w. Section 107 of IPC is lacking. In any case, the investigation is already over and the charge-sheet is already filed. Therefore, after about two years from the date of incident, in such circumstances, the applicants' custodial interrogation will not serve any purpose. So far as

allegations of torn of suicide notes is concerned, that will amount to offence under section 201 of IPC. But copies of those suicide notes are already available with the police. They are part of the charge-sheet. Therefore, ultimately, applicants can be tried for all these offences at the trial. At this stage, their custodial interrogation is not necessary.

7. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R.No.I 352 of 2019 registered at L. T. Marg police station, the applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.
- (ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)