

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [BA] NO. 182/2021.

Vaibhav Premanand Mawale.

-VERSUS-

State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A. Sudame, Advocate for the Applicant.
Ms. S. Jachak, A.P.P. for the Non-applicant – State.
Shri S.A. Gandhe, Advocate Assisting prosecution.

CORAM : VINAY JOSHI, J.

DATE : MARCH 31, 2021.

Hearing was conducted through Video Conferencing.

2. This is an application under Section 439 of the Code of Criminal Procedure for grant of regular bail. Heard both sides, including the learned learned Counsel for the informant.

3. On 03.12.2020, the victim girl aged 22 years committed suicide at her residence by way of hanging. She left a suicidal note running into 6 pages blaming the applicant and one girl, responsible for her death. In her suicidal note the victim girl repeatedly stated that the applicant – Vaibhav physically used her and refused to marry despite long standing relationship. The suicidal note addressed to the parents

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also signaled to take strict action against the applicant Vaibhav, for her death.

4. On the basis of the report lodged by the informant (father of the victim), a crime came to be registered vide Crime No.486/2020 for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code. The learned Counsel for the applicant argued that merely on the basis of suicidal note his liberty cannot be curtailed. In order to establish abetment as required to constitute an offence punishable under Section 306 of the Indian Penal Code, there must be intentional aiding or sufficient instigation to the victim to do the things. According to him, mere refusal to marry would not amount to abetment within the meaning of Section 107 of the Indian Penal Code. Moreover, it is submitted that the applicant is a qualified youth and has secured a job at Pune. There was relationship between the applicant and the deceased, however, since last two years they were detached. There was no proximity in between the applicant's relationship with the incidence of suicide. Lastly, it is contended that the police have already seized mobile handset, collected CDR, whats-app chat and now the investigation is complete.

5. The State has resisted the bail by filing reply affidavit dated 09.03.2021. The prosecution case in detail has been narrated. The entire thrust of the prosecution is on the suicidal note, wherein the

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victim has repeatedly stated that the applicant along with his girl friend are solely responsible for her extreme step. According to the prosecution, there is sufficient material to establish direct involvement of the applicant, hence, he is not entitled to grant of bail. The learned Counsel appearing for the informant has reiterated the arguments advanced by the learned A.P.P. for State.

6. On 03.12.2020, the victim girl aged 22 years, an engineering student committed suicide by hanging at her residence. It is the prosecution case that the applicant is primely responsible for her death. The acts of the applicant are sufficient to abet the victim to end her life. One suicidal note running into 6 pages was found near the dead body. In the said suicidal note, the victim has stated that the applicant and one Disha Boob are responsible for her suicide. The victim has stated that, she was in love with the applicant since last 9 years and the applicant had agreed to marry. Now another girl namely Disha came in the life of the applicant and therefore, the applicant had refused to marry. The victim stated that she begged to the applicant for marriage, but, the applicant flatly refused by stating that he would not mind even if she dies. The victim further stated that the applicant abused her as well as threatened that he would forward photographs to her father. The entire tenor of the suicidal note conveys that all the while the victim stated about her relationship with the applicant

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accused, and his refusal to marry. She blamed that as another girl came in the life of the applicant, he refused to marry and destroyed her life. She also requested her father to take action against the applicant for her suicidal death.

7. The learned counsel for the applicant has submitted that mere mentioning of an act of harassment in the suicidal note would not constitute an offence of abetment to commit suicide. There must be a proof of direct or indirect act of incitement to the commission of suicide. Merely the allegations of harassment without any positive action in proximity is not sufficient. In order to impress said submission, he relied on the observations (paragraph nos. 47 to 50) of the Hon'ble Supreme Court in case of **Arnab Manorangan Goswami .vrs. The State of Maharashtra and others (Criminal Appeal No. 742/2020 dated 27.11.2020)**. The learned counsel for the applicant would submit that there is no evidence capable of suggesting that the applicant intended by his act to instigate the victim to commit suicide.

8. In above referred case of Arnab Gowasmi, the Supreme Court took survey of its earlier decisions and has reiterated the essentials to constitute an offence of abetment to commit suicide. No doubt the term "abetment" in context to Section 306 of the Indian Penal Code involves a mental process of instigation and intentional act in furtherance of the desire. It requires active participation, may be

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direct or indirect to lead the deceased to commit suicide. Mere act of harassment or isolated instance is not sufficient. In case at hand, the victim girl wrote 6 page suicidal note, wherein she reiterated that the applicant should be held responsible for her act. She alleged that the applicant refused to marry despite her long standing relationship and threatened her to send photographs to her father and also abused her.

9. Whether these acts of the applicant would constitute sufficient instigation or amounts to intentional aiding to the deceased, is a matter of trial. At this stage it is not appropriate to make any comments on the said aspect since it would affect the merits of the trial. However, the fact remains that besides suicidal note there is no other material which would stand against the applicant. There are no allegations that the applicant had personally visited the victims place or did anything in proximity to the occurrence.

10. On rejection of pre-arrest bail, the applicant has surrendered before the police and faced custodial interrogation. The police have seized suicidal note, collected natural handwriting of the deceased. During the investigation, mobile handset of the applicant was seized as well as whats-app messages were recovered. The learned A.P.P. has not pointed out any whats-app message which can certainly show the act of instigation on the part of the applicant.

11. The co-accused Disha had approached to this Court for

quashing of the first information report by way of Criminal Application No.153/2021. This Court vide order dated 29.03.2021 granted interim relief in the nature to continue the investigation, but, the charge sheet should not be filed without seeking permission of this Court. The learned A.P.P. submitted that the investigation is already complete, but, due to order of this Court charge sheet has not been filed as yet.

12. In short the investigation is complete and charge sheet is ready. The applicant is educated youth. Having regard to the nature of accusation, there are no chances of repetition of the crime. There are no antecedents against the applicant/accused. The applicant is not the resident of Taluq Shegaon from where the informant family hails. Major evidence is in the form of suicidal note, and electronic material, hence, there are no chances of tampering with the same. Having regard to all these facts, the applicant is entitled to grant of bail. Hence, the following order.

- (i) The applicant/accused – Vaibhav Premanand Mawale, be is released on bail in connection with Crime No. 486/2020 registered with the non-applicant Police Station, for offence punishable under Section 306 read with Section 34 of the Indian Penal Code, on his furnishing P.R. Bond of Rs. 50,000/- with one surety in the like amount.
- (ii) The accused shall not directly or indirectly make

any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

- (iii) The accused shall provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- (iv) Criminal Application is accordingly disposed of.

JUDGE

Rgd.

**Rakesh
Dhuriya** Digitally signed by
Rakesh Dhuriya
Date: 2021.04.01
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