

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 192/2021

(Dnyaneshwar Ganeshrao Dhawale Vs. The State of Maharashtra)
 with

CRIMINAL APPLICATION (ABA) NO. 82/2021

(Dineshchandra S/o Raghuwardayal Shukla Vs. The State of Maharashtra)
 with

CRIMINAL APPLICATION (ABA) NO. 83/2021

(Reshma Vijay Gadhve & ors. Vs. The State of Maharashtra)
 with

CRIMINAL APPLICATION (ABA) NO. 110/2021

(Satish S/o Vasantrya Chaudhari Vs. The State of Maharashtra)
 with

CRIMINAL APPLICATION (ABA) NO. 122/2021

(Anand S/o Mukundrao Wagatkar Vs. The State of Maharashtra)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

ABA192/2021

Shri A. A. Dhawas, Advocate for applicant.
 Shri Aanand M. Deshpande, APP for non-applicant/State.

ABA82/2021

Ms. Chaitali Bhut, Advocate h/f Shri R.M. Daga, Advocate for applicant.
 Shri Aanand M. Deshpande, APP for non-applicant/State.

ABA83/2021

Shri Firdos Mirza, Advocate for applicants.
 Shri Aanand M. Deshpande, APP for non-applicant/State.
 Shri Apurv De, Advocate for assisting to prosecution.

ABA 110/2021

Shri S. V. Sirpurkar, Advocate for applicant.
 Shri Aanand M. Deshpande, APP for non-applicant/State.

ABA 122/2021

Shri S. V. Sirpurkar, Advocate for applicant.
 Shri Aanand M. Deshpande, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATED : 03.12.2021.

Heard.

2. All these applications for pre-arrest protection are arising out of Crime No. 48/2021 registered with

the Police Station Awadhutwadi, Taluka and District Yavatmal for offence punishable under Sections 166, 166-A, 167, 302, 306 read with Section 34 of the Indian Penal Code. Interim protection has been granted to all applicants by this Court, which is prevailing till date. Bail is claimed on the ground of innocence, false implication, inadequacy of material, delay in lodgment of report etc. The State resisted bail by filing reply-affidavit. Besides that, learned counsel for original informant also resisted bail by making submission.

3. A report was lodged on 09.07.2018 by one Smt. Bhimabai Gadhave alleging that her son Vijay died in suspicious circumstances on 26.06.2018. She expressed suspicion that though her son was stated to met with suicidal death by hanging, however it was a case of murder by strangulation. Since the Police did not took cognizance, she filed second report on 17.07.2018, wherein she expressed that due to harassment meted out by wife, parents-in-law and brother-in-law, her son committed suicide. Thus, the allegation against them was of abatement to commit suicide.

4. Since Police did not take action, Bhimabai Gadhave approached to this Court by filing Criminal Writ Petition No. 202/2019 seeking necessary directions. In the said writ petition, learned Division Bench of this Court was prima facie of the view that

role of the Police Officers who conducted A.D. (marg) inquiry was suspicious and therefore, directed to the Superintendent of Police, Yavatmal to appoint special Investigating Officer and to register offence. In pursuance of said direction, concerned Police registered existing Crime No. 48/2021 for the aforestated sections.

5. Reading of the First Information Report (FIR) discloses that the allegations against family members (Criminal Application (ABA) No. 83/2021) was of abating deceased Vijay to commit suicide or of committing murder whilst allegation against rest of the applicants who are the Police Officers was about committing offence under Sections 166, 166-A, 167 of the Indian Penal Code.

6. On 26.06.2018, deceased Vijay who allegedly committed suicide was taken to the Hospital where he was declared dead on admission. On the very day, the Police registered Marg (AD) No. 46/2018 in terms of Section 174 of the Code of Criminal Procedure (Code) and carried inquiry. After conducting necessary inquiry, the Police filed summary report concluding that it was a suicidal death.

7. It was informant's grievance in criminal writ petition that the Police Officers by joining hands with the accused (family members) destroyed the

evidence. Moreover, the Division Bench recorded its prima facie opinion that the role of Police Officers goes beyond the stage of gross negligence and it enters the arena of joining hands with the accused in committing serious crime.

8. So far as applicant Dyaneshwar, Police Officer is concerned, he was first Investigating Officer who conducted spot Panchanama and recorded statements of some witnesses in A.D. (marg) inquiry. Admittedly, he conducted spot Panchanama at I.C.U Ward of the Hospital. According to the informant though as per Doctor's opinion, deceased Vijay was brought dead, still Spot Panchanama was carried in Hospital. According to the informant, death occurred in the residence, however the Police neither carried Spot Panchanama at his house nor seized ligature which was used for committing suicide or for committing murder. Applicant Dineshchandra was P.S.O. at the relevant time whilst applicant Satish Chaudhari was also on duty at relevant period. Moreover, the applicant Anand Wagatkar has finally submitted closer report.

9. Apparently, the role of Police came into picture after death of Vijay therefore, at the most, their role would be confined to the offence punishable under Sections 166, 166-A, 167 of the Indian Penal Code. Prima facie, it reveals from the Police Paper as

well as Spot Panchanama that deceased Vijay was brought to the Hospital under impression that he may be alive. It is argued that during trial it is to be seen whether it was gross negligence on the part of the Police or a deliberate act. However, there is no dispute that Police Officers have no role as regards to the offence punishable under Sections 302 and 306 of the Indian Penal Code. Having regard to the limited allegations against the Police Officers, they have made out case for grant of protection.

10. As regards to Criminal Application (ABA) No. 83/2021 is concerned, they are wife, parental-in-law, and brother-in-law of deceased Vijay. It is alleged that they were insisting deceased Vijay who was working as *Talathi* to hand over his salary. At the relevant time due to transfer, deceased Vijay was staying at the house of applicants. The informant Bhimabai Gadhave stated that time and again, deceased Vijay had informed her that all these applicants used to mentally harass him. On the other hand, learned counsel for the applicants would submit that informant Bhimabai was well aware about the suicidal death. Bhimabai's another son Nagesh has already informed the things to her. After death of Vijay, there was a dispute on account of compassionate appointment and succession. It is submitted that due to said dispute, belated false report has been filed by the informant.

11. It is a matter of record that though Vijay died on 26.06.2018, the first grievance was made on 09.07.2018. Bare perusal of Police Report and earlier complaints dated 09.07.2018, 17.07.2018 indicates that informant has merely expressed suspicion about homicidal death. She has alternatively made grievance about suicidal death due to harassment meted out by the applicants. *Prima facie*, it is difficult to comprehend both things as the Police registered crime under Section 306 as well as 302 of the Indian Penal Code which has its own periphery.

12. Pertinent to note that after registration of existing crime, the Police have sought expert's opinion regarding cause of death. In response, the Medical Officer answered the query as below:-

“Answer No.3- Considering the characteristics of ligature mark present over the neck of deceased and in view of absence of any other external or internal injury, the hanging in this case is most likely suicidal in nature.”

13. Certainly, the report is leaning towards suicidal death which assumes significance. Be that as it may, *prima facie*, there is no material to indicate that act of applicants constitute abatement to commit suicide. It is a matter of trial to establish that the applicants have abated deceased Vijay which resulted into committing suicide.

14. The alleged occurrence is of 26.06.2018. The prosecution is unable to satisfy the need for custodial interrogation. Already these applicants have been protected by this Court prior to seven months. In the circumstance, I find that this is a fit case to exercise judicial discretion in protecting their liberty. In view of that following order:-

- (I) Applications stand allowed and disposed of.
- (II) Interim orders dated 23.03.2021 passed in Criminal Application (ABA) No. 192/2021, dated 15.02.2021 passed in Criminal Application (ABA) No. 82/2021, dated 10.03.2021 passed in Criminal Application (ABA) No. 83/2021, dated 24.02.2021 passed in Criminal Application (ABA) No. 110/2021 and dated 01.03.2021 passed in Criminal Application (ABA) No. 122/2021 are hereby made absolute upon same terms and conditions.
- (III) Henceforth, the applicants of Criminal Application (ABA) No. 83/2021 shall attend concerned Police Station on every Sunday in between 11.00 a.m. to 02.00 p.m. till filing of charge-sheet or for the period of 90 days whichever is earlier.

- (IV) Remaining applicants shall attend concerned
Police Station as and when called.

JUDGE

Gohane