

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

CRIMINAL APPLICATION (BA) NO.644 OF 2021

(Vinod Shivkumar Vs. State of Maharashtra thr. PSO PS Dharni, Dist. Amravati)

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

Court's or Judge's orders.

Mr. Firdos Mirza, Advocate for Applicant.
Mrs. K.R. Deshpande, APP for Non-Applicant/State.
Mr. Abhay Sambre, Advocate to assist the prosecution.

CORAM: ROHIT B. DEO, J.

DATE: 14th JULY, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. Mrs. 'D', who was perceived to be a hard working Range Forest Officer, unfortunately took the extreme step by shooting herself to death.

3. According to the prosecution, Mrs. 'D' penned three suicide notes. The first note is a letter addressed to Mr. Reddy the then Additional Chief Conservator of Forest, Melghat Tiger Project, Amravati, who is also arraigned as accused. The second note is a letter addressed by Mrs. 'D' to her mother and the third note is a letter addressed by Mrs. 'D' to her husband.

4. On the basis of report lodged by the husband of

the deceased Crime 211/2021 is registered with Police Station Dharni, District Amravati for offences punishable under Sections 306, 312, 504, 506 of the Indian Penal Code and the applicant, who was then the immediate superior of Mrs. 'D', and who is a member of the Indian Forest Service, was arrested on 27.03.2021.

5. The investigation is complete and the charge-sheet is filed.

6. The applicant made an attempt to persuade the learned Additional Sessions Judge, Achalpur to grant bail, but in vain.

7. I have heard the learned counsel for the applicant Mr. Firdos Mirza, the learned APP Mrs. K.R. Deshpande and the learned counsel who is assisting the prosecution Mr. Abhay Sambre and with their assistance the material in the charge-sheet is perused.

8. Mr. Mirza has twin submissions to canvass. The first submission is, that even if the contents of the letters, which according to the prosecution are penned by Mrs. 'D' are taken at face value, even a *prima facie* inference of abetment to commit suicide cannot be drawn. Mr. Mirza would rely on the decision of the Supreme Court in *Amalendu Pal alias Jhantu v. State of West Bengal (2010) 1 SCC 707* to buttress the said submission. The other

submission is, that even if it is assumed *arguendo*, that the contents of the three letters will translate into evidence, the allegations therein are belied by the other material collected during the investigation. Mr. Mirza did make an attempt to question the popular perception that Mrs. 'D' was an extremely efficient and hard working woman officer by referring to certain departmental memorandums issued and an inquiry conducted. It is the applicant Mr. Shivkumar who, Mrs. 'D' has verily blamed for her death, who is on trial, and not, the credentials of Mrs. 'D' as a Forest Officer.

9. The three letters which according to the prosecution are penned by Mrs. 'D' make a painful and indeed heart rending reading. Mrs. 'D' has blamed the applicant of continuous, systematic, sustained and deliberate persecution. Mrs. 'D' has alleged that she was insulted and humiliated in the presence of colleagues and the villagers, that she was threatened of departmental action and involvement in criminal prosecution, that she was summoned at odd hours and addressed in an inappropriate language. While it would not be necessary to reproduce each and every allegation in the three letters penned by Mrs. 'D', in my considered view, the cumulative effect of the allegations is that a reasonable inference can be drawn, that a situation was deliberately created as would compel a lady officer of even a normal sensitivity to contemplate the extreme step. While it would only be for the trial court, on the basis of the evidence adduced, to

record a finding whether the conduct of the accused was such as would lead to an inference that the deceased was pushed in a corner and left with no option but to commit suicide, I am impelled to make the observations *supra*, as *prima facie* expression, for the limited purpose of consideration of the bail application.

10. While there does appear to be, in favour of the prosecution, the existence of a *prima facie* case of abetment as would attract the provisions of Section 306 of the IPC, the same cannot be said as regards Section 312 which penalizes voluntarily causing a woman with child to miscarriage. *Prima facie*, the allegation that the applicant, as the Assistant Conservator of Forest, directed the deceased to undertake a trek in difficult terrain when she was carrying, by any stretch of imagination suggests culpable intent to cause miscarriage.

11. It is well settled that the existence of a *prima facie* case is not the only consideration governing grant or refusal to grant bail, particularly since the applicant is not charged with commission of offence punishable with death or life sentence. The gravity of the offence, the status of the accused, the possibility of the accused not being available, or otherwise, to face the trial, the propensity or the potential to influence the course of trial are but some of the relevant considerations.

12. The learned APP Mrs. Deshpande initially urged that having recorded a *prima facie* view that the three letters penned by Mrs. 'D', if the contents are proved during the course of the trial, would constitute abetment, I should straight away reject the bail application. It is well settled, that despite the existence of *prima facie* case, bail can be granted particularly if the offence is not punishable with death or life imprisonment. Bail cannot be refused either as a pre-trial punishment or to cater to or douse the collective anger and outrage of the society. I therefore, indicated to the learned APP Mrs. Deshpande that unless there is some material in possession of the prosecution to suggest that the applicant, who is a member of the Indian Forest Service, albeit under suspension, will flee from the course of justice or will subvert the trial or influencing the witnesses, there is no purpose in continuing the incarceration.

13. The learned APP Mrs. Deshpande in response, invited my attention to the statement of the driver of the applicant which according to her shows that after Mrs. 'D' committed suicide, the applicant made an attempt to leave Nagpur and was ultimately apprehended from the Nagpur Railway Station. The diverse responses of persons accused of a crime cannot be analyzed by any mathematical formula. Different persons react differently to an eminent implication in an offence. More often than not, the first immediate impulse is to buy time and avoid immediate arrest and make an attempt to secure pre-arrest protection, if possible,

I am not in a position to accept the submission of Mrs. Deshpande that the statement of the driver makes the applicant a flight risk.

14. Despite my persistent queries, no material is brought to my notice to suggest that the applicant or any other member of the Indian Forest Service has made any attempt to influence the witnesses. The prosecution was called upon to bring to my notice such material in the context of the submission that the applicant is in a sense protected and helped by the other members of the Indian Forest Service and that the integrity and impartiality of the witnesses who are lower in rank shall stand compromised, if the applicant is released on bail. Mrs. Deshpande fairly states that till date, there is no complaint of any attempt of any colleague of the applicant, belonging to the Indian Forest Service or otherwise, of attempt to influence the witnesses. In any event, if the applicant misuses the liberty, the prosecution is not remedy-less.

15. In my considered view, notwithstanding that the three letters on which the prosecution is relying do make out a *prima facie* case of abetment, if taken at face value, considering that the applicant is suspended and would not be in a position to influence the witnesses, that the applicant is not at flight risk and that bail cannot be denied as a pre-trial punishment, I am inclined to hold that a case is made out for grant of bail.

16. The application is allowed.
17. The applicant be released on bail subject to furnishing of personal bond of Rs.1,00,000/- (One Lakh only) with two solvent sureties of like amount.
18. The applicant shall not make any attempt, directly or indirectly, to contact much less influence, any witness cited in the charge-sheet nor shall the applicant make any attempt but otherwise influence the course of trial.
19. The applicant shall attend every date of hearing scrupulously and shall report at the Sadar Police Station, Nagpur on the second and forth Saturday of every month.
20. The applicant shall, within 72 hours of release, furnish to the Investigating Officer his current address and phone numbers and shall keep the Investigating Officer updated of the change, if any. The applicant shall deposit his passport, if any, with the Investigating Officer.
21. The applicant shall not leave the country without permission of the jurisdictional court.

JUDGE