

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

CRIMINAL APPLICATION (ABA) NO. 738/2021

(Mulchand Namomal Setiya 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

Shri Y. S. Gorle, Advocate for applicant.
Shri S. D. Sirpurkar, APP for non-applicant.
Shri S. P. Bhandarkar, Advocate for assisting
to prosecution.

CORAM : VINAY JOSHI, J.
DATED : 02.12.2021.

Heard

2. Registration of Crime No. 643/2021 with the Police Station Jaripatka, Nagpur, District Nagpur for offence punishable under Sections 306, 384, 387, 504, 506 read with Section 34 of the Indian Penal Code led applicant to apply for grant of pre-arrest protection. Bail is claimed on the ground of innocence, false implication, inadequacy of material, etc. It is argued that the main allegations are against co-accused Rajesh who is already arrested. The applicant has no direct or indirect role nor he has concern with the suicidal death of Mukesh. Besides that, it is argued that in order to establish an offence punishable under Section 306 of the Indian Penal Code, there must be adequate *mens rea* and case has to be made out constituting ingredients of Section 107 of the Indian Penal Code.

3. The State resisted bail by filing the reply-affidavit. The prosecution case in brief has been narrated. It is contended that the applicant and his brother Rajesh have continuously harassed deceased by various modes. They raised monetary demand and by making various complaints, made his life miserable. It is stated that the deceased has specifically written suicide note blaming both brothers responsible for suicide. The case is of serious nature for which custodial interrogation is necessary.

4. The informant intervened and resisted bail application by filing reply-affidavit. The entire story about persistent harassment has been stated. It is contended that due to continuous mental and physical harassment, deceased went in depression and ultimately committed suicide.

5. Report dated 09.10.2021 has been lodged by sister-in-law of deceased. It is her case that applicant's brother (co-accused Rajesh) took premises owned by deceased on rent in the year 2019. Whenever deceased asked for rent, co-accused Rajesh used to abuse and threat. The informant stated that they went to the applicant with a grievance against his brother. However, the applicant also threatened and insisted them to comply monetary demand of his brother. The informant has stated several instances regarding threats given by both brothers. She stated that the applicant threatened to the deceased that he should comply monetary demand of Rs. 10 lakhs, failing which, rented premises would not be vacated. The applicant also threatened to make complaint with Income Tax Department. Informant stated that during said period, time and again, both brothers came to their residence as

well as at working place of deceased and threatened him. Finally, on 06.10.2021, due to persistent harassment, Mukesh committed suicide by hanging.

6. By placing reliance on the decision of this Court in case of **Rahul Raj Singh Vs. The State of Maharashtra, 2016 SCC OnLine Bom 6332**, it is argued that even at the stage of anticipatory bail, it is necessary to see whether *prima facie* case of abatement is made out. There should be instigation or conspiracy or intentional aiding to the deceased to commit suicide. According to the applicant, the main allegations are against the co-accused Rajesh who was the tenant of deceased. Some earlier reports lodged by the family members of accused are shown to state that out of rivalry, false case is made out.

7. During the course of investigation, the Police have recorded various statements. The witnesses stated that time and again both brothers insisted for monetary demand and gave threats. Pertinent to note that the Police have seized a detailed suicide note written by the deceased in 'Sindhi' language. Translation of suicidal note discloses that the deceased has clearly blamed both brothers for taking him extreme step. The suicidal note indicates that the deceased has also put photographs of accused along with their mobile numbers. In suicidal note, deceased has stated that due to persistent threat and blackmailing at the hands of both brothers, he is committing suicide. It is transpired during the course of investigation that before committing suicide, deceased has video-graphed a message in mobile blaming both brothers solely for his suicide.

8. Undisputedly, in order to establish the case under Section 306 of the Indian Penal Code, the essential ingredients to constitute abatement have to be made out. It is a totally factual aspect whether the act of applicant could be construed as sufficient abatement to the deceased to commit suicide. It reveals that there are specific allegations that during short span of two years, both brothers have continuously harassed deceased by raising monetary demand and giving life threat.

9. The informant has produced pen-drive containing video clip of last message sent by deceased. The said video clip was seen to find out *prima facie* material. It reveals that deceased has repeatedly said that both brothers have threatened him, made complaints and due to that he is in deep depression, hence committing suicide for which Rajesh and Mulchand (applicant) are solely responsible. The plight of deceased has to be understood that not only he has written detailed suicide note along with photographs of accused but has passed a video recorded message from his mobile blaming accused. *Prima facie*, it appears that harassment became unbearable hence deceased had video-graphed a message blaming accused so that they cannot be spared. The said act of deceased indicates that he was keen to expose the acts of deceased. The said material *prima facie* indicates that deceased was under threat and pressure of both brothers due to which he preferred to die. Whether the continuous threats given by the applicant and monetary demand amounts to intentional aiding is matter of trial. However, *prima facie*, there is sufficient material to indicate the involvement of the applicant.

10. The investigation is at preliminary stage. The Police have to collect various documents and verify the transactions between the parties. There could be no effective investigation unless custodial interrogation is made. After-all, a person has lost his life which needs to investigate from all possible angles.

11. In view of above, it is not a fit case to grant pre-arrest protection, hence application stands rejected and disposed of.

JUDGE

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Digitally signed
by JITENDRA
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