

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

936 BAIL APPLICATION NO.64 OF 2022

**SUNITA ALANKAR @ SUNITA HARICHANDRA ANDHARE
VERSUS
THE STATE OF MAHARASHTRA**

...
Shri. Ms. Prandnya Talekar, Advocate for the Applicant
Mrs. R.P. Gaur, APP for the Respondent-State

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CORAM : M.G. SEWLIKAR, J.

DATE : 01st FEBRUARY 2022

PER COURT:

1. By this application, the applicant is seeking her enlargement on bail in connection with Crime No.0724/2021 registered with Kotwali Police Station Ahmednagar, Dist. Ahmednagar for the offence punishable under Section 306 read with 34 of the Indian Penal Code.

2. In nutshell, facts are that the deceased Prakash Surse was the husband of the informant. It is alleged in the FIR that since about 7-8 months before the incident the deceased Prakash had illicit relations with the applicant. The applicant is a dancer in Alankar Kala Kendra, Supa. She started accusing the deceased that she was pregnant from the deceased. She started blackmailing the deceased saying that she was pregnant from the deceased and the deceased should pay Rs.5 lakhs to her or make some other arrangements of the applicant. It is

further alleged in the FIR that accused Raju Garje, Ashok Garje and Subhash Aalhat started harassing the deceased on this count. They used to harass the deceased for paying Rs.5 lakhs to the applicant. On 2nd July 2020, she was trying to contact the deceased. However, the deceased did not respond. The deceased had a lottery shop. The brother of the informant went to the lottery shop and found that the deceased had hanged himself. The informant lodged the FIR alleging that because of the harassment caused by the applicant and other accused, the deceased ended his life.

3. Learned Counsel Ms. Talekar submits that the allegations in the FIR do not indicate that the applicant had the intention to bring about the suicide of the deceased. She was claiming that she was pregnant from the deceased and was demanding Rs.5 lakhs on that count. She submits that the prosecution could not collect any evidence to show that the applicant was in fact pregnant leave alone pregnant from the deceased. When this evidence is lacking, it cannot be said that the applicant had the intention to bring about the suicide of the deceased. She submits that there is delay of half year in lodging the FIR. For this purpose, she placed reliance on the case of *Madan Mohan Singh Vs. State of Gujarat and Another* (2010)8 SCC 628 and *Somnath Vs. State of Maharashtra and Others* MANU/MH/0845/ 2017.

4. Learned APP Mrs. Gaur submits that the allegations made in the FIR clearly show that the applicant created such a situation that the deceased had no other option but to end his life. Not only the applicant, but the other accused also harassed the deceased for payment of Rs.5 lakhs. She submits that there are statements of witnesses, which indicate that in the past, the deceased had paid Rs.1,40,000/- to the applicant. The statements of the witnesses show that the deceased was under tremendous pressure and since he could not handle that pressure, he committed suicide.

5. In the case of *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605, Hon'ble Apex has held as under :-

“17. Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or “urging forward”. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action; provoke to action or reaction”; “to keep irritating or annoying somebody until he reacts”.

18. Similarly, “urge” means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or “urge forward” the latter with intention to provoke, incite or encourage the doing of an act by the latter.”

6. In the case of *M. Mohan Vs. State Represented by the Deputy Superintendent of Police, (2011) 3 SCC 626*, the Hon'ble Supreme Court observed that:-

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.”

7. In the case of *Madan Mohan Singh Vs. State of Gujarat and Another (2010) 8 SCC 628*, it has been observed, as under:-

“12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.”

8. On the backdrop of the decisions of the Supreme Court, the picture that emerges is that the deceased had illicit relations with the applicant. There is no evidence to show that the applicant was pregnant much less from the deceased. The applicant was demanding Rs.5 lakhs from the deceased and accused Raju Garje, Ashok Garje and Subhash Aalhat used to harass the deceased. From the FIR, it appears that the intention was to make the deceased pay Rs.5 lakhs to the applicant. The allegations do not indicate that the applicant had the

intention to bring about the suicide of the deceased. The allegations do not indicate that the applicant had aided, instigated the deceased in the commission of the suicide. Having regard to the nature of the allegations, I am inclined to release the applicant on bail. The offence is not punishable with death or imprisonment for life. The offence is punishable with imprisonment for 10 years. The applicant has no criminal antecedents. She is not likely to flee from the justice. In view of this, following order is passed.

ORDER

- (i) The applicant be released on P.R.Bond of Rs.30,000/- with one solvent surety in the like amount and on condition that she shall not interfere in the investigation, shall not pressurize witnesses and shall remain present before the Investigating Officer, as and when called upon to do so by the Investigating Officer and on the condition that she shall not leave Country without prior permission of the concerned Court.
- (ii) Application is disposed off.
- (iii) These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during the trial.

[M.G. SEWLIKAR, J.]