

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

ANTICIPATORY BAIL APPLICATION NO.313 OF 2022

- 1) Suresh S/o Bhaskar Gaikwad,
- 2) Prabhakar S/o Bhaskar Gaikwad,
- 3) Bhaskar S/o Kashinath Gaikwad

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Nilesh S. Ghanekar Advocate for Applicants.
Mr.A.M. Phule, A.P.P. for Respondent-State.
Mr.V.B. Madan-Patil Advocate for the informant for
assist to APP.
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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 20th APRIL, 2022

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.74 of 2022 registered with Khultabad Police Station, Taluka-Khultabad, District-Aurangabad for the offence punishable under Sections 306, 323, 504 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Ghanekar for the applicants and learned APP Mr.A.M. Phule for the respondent – State well assisted by learned Advocate Mr. Madan-Patil for the informant. In order to cut-short, it can be stated that both the sides have made submissions in support of their respective contentions.

3. The First Information Report (for short “FIR”) has been lodged by one Rekha Subhash Palhal, who is the wife of deceased Subhash Namdeo Palhal. The FIR came to be lodged on 20th February 2022 in respect of death of her husband on 19th February 2022. It has been contended by her that her father-in-law has agricultural land at village Rel, Taluka-Khultabad. She states that it is a ceiling land and it was cultivated by her father-in-law and his brothers till 2008. According to her, after 2008 the present applicants started cultivating it. Since the land was ceiling land, it was not allowed to be sold, still the applicants were insisting the husband of the informant that he should sell the land to them. They used to assault and abuse Subhash on that count and for that purpose they had lodged report with the Police Station 2 to 3 years prior to the FIR. So also it is stated that dispute was filed before Sub-Divisional Magistrate, Kannad,

Civil Judge, Senior Division, Aurangabad, Additional Divisional Commissioner, Aurangabad and all these three matters are subjudice. She states that in spite of the matters being subjudice, the present applicants used to pressurize Subhash that he should sell the land to them. Subhash used to convey those acts of the applicants to the informant. She further states that her husband when out of the house around 10.00 a.m. on 17th February 2022 and around 11.00 a.m. one Ganesh Jadhav informed her that Subhash was lying near the house of one Ashok Nalawade and froth was coming out of his mouth. She then states that she went along with her sister-in-law at the said place and asked husband as to what had happened. It was told by him to her that the present applicants had assaulted him and because of their behaviour with him, he has consumed poisonous substance. Informant then took him to hospital but unfortunately he expired on 19th February 2022. The informant, therefore, states that the present applicants had abetted the commission of suicide by her husband Subhash.

4. The most important document to be considered is the postmortem report. The postmortem report shows that it was done between 12.40 p.m. to 1.40 p.m. at Ghati Hospital. Column

No.17 shows only two surface wounds or injuries, but the same are practically not the injuries. Both of the same are intravenous line insertion, which might be at the time of giving treatment. The stomach contains still showed 100 ml. of brownish black fluid. Viscera is preserved. However, it appears that the opinion in respect of death that is given, is final. It is stated "Liver cirrhosis with bilateral pulmonary consolidation."

5. Before deceased Subhash was admitted to hospital, MLC has been taken on 19th February 2022 by Khultabad Police Station, wherein it is stated that he was admitted by the informant in casualty of Ghati Hospital and the casualty medical officer had informed the Police that deceased was found in drunken condition with symptoms of poisoning at about 12.00 p.m. on 17th February 2022. It appears from the police papers that the medical papers from Bazar Sawangi Hospital has not been collected. However, there is also one reference letter by Khultabad Police Station to medical officer, Ghati Hospital dated 18th February 2022 for permission to take statement of Subhash and it states that the present informant had made an application stating that on 17th February 2022 present applicants had assaulted her husband and they had administered poison to him.

Now, the informant is coming with the case that her husband had consumed the poison himself. Statement of Indubai Palhal has been recorded, who is sister-in-law of the informant and had gone along with informant at the place where Subhash was lying. She also states that when informant asked Subhash, as to what has happened, at that time he told that present applicants had harassed him on the count of the land and because of their pressure and harassment he has consumed poisonous substance. Interesting to be noted is that in the FIR it has been tried to be projected that on that day i.e. 17th February 2022 Subhash was assaulted by the present applicants and then because of the alleged harassment he had consumed the poisonous substance. But the lady, who was along with the informant, has not stated so that there was assault by the present applicants to Subhash on that day.

6. Taking into consideration these statements, then it is required to be considered, as to whether firstly it was the suicide in view of the cause of death and secondly, whether the alleged act would amount to abetment within the four corners of Section 107 and / or Section 306 of the Indian Penal Code. With this kind of evidence the custodial interrogation is not required and

therefore, if the applicants are made available for the investigation, then it would be in the interest of justice from both sides. Arrest is not the only option in such cases. With stringent conditions the application deserves to be allowed. Hence the following order:-

ORDER

- i) Application stands allowed.

- ii) In the event of arrest of applicant No.1 – Suresh S/o Bhaskar Gaikwad, applicant No.2 – Prabhakar S/o Bhaskar Gaikwad and applicant No.3 – Bhaskar S/o Kashinath Gaikwad in connection with Crime No.74 of 2022 registered with Khultabad Police Station, Taluka-Khultabad, District-Aurangabad for the offence punishable under Sections 306, 323, 504 read with Section 34 of the Indian Penal Code, they be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

- iii) Applicants shall attend Khultabad Police Station on every Tuesday and Friday between 10.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.
- iv) Applicants shall not tamper with the evidence of the prosecution in any manner.
- v) Applicants shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]