

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

APPLICATION FOR CANCELLATION OF BAIL NO.50 OF 2022

Sayyad Rajik S/o Sayyad Arif

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) Yogita Subhash Bhombe

...RESPONDENTS

...
Mr.Abid R. Shaikh Advocate for Applicant.
Mrs.V.N. Patil-Jadhav, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 20th APRIL, 2022

ORDER :

1. Present Application has been filed under Section 439(2) of the Code of Criminal Procedure for setting aside grant of anticipatory bail to respondent No.2 by learned Additional Sessions Judge, Aurangabad on 17th March 2022 in Bail Application No.308 of 2022. Respondent No.2 has been arrayed as an accused in Crime No.12 of 2022 registered with Police Station, Fardapur, Taluka-Soyegaon, District-Aurangabad for the

offence punishable under Sections 305, 323, 504 and 506 of the Indian Penal Code.

2. Heard learned Advocate for the applicant and learned APP for respondent No.1 – State.

3. Learned Advocate for the applicant vehemently submitted that the contents of the First Information Report (for short “FIR”) clearly show that there was an instigation to commit suicide by the accused – respondent No.2 who was the teacher by profession and she has intentionally put pressure as well as insulted the child who was aged 15 years at that time. She has slapped and assaulted him and because of which he had lost his temper and was not even eating food and thereafter had not gone to the school. Ultimately, because of the pressure, he has committed suicide. Those acts of respondent No.2 would definitely amount to instigation / abetment as contemplated under Section 305 of the Indian Penal Code. The learned Additional Sessions Judge wrongly relied on **Rahul Raj Singh vs. State of Maharashtra, 2016(6) LJSOFT 16** and it is then wrongly held that there was no *mens rea* for respondent No.2 to commit the said offence. The grant of anticipatory bail is illegal and deserves to be set aside.

4. It is not even necessary to issue notice to respondent No.2 taking into consideration the reasons assigned by the learned Additional Sessions Judge while granting anticipatory bail to respondent No.2. It will not be out of place to mention here that written arguments submitted on behalf of the present applicant were also considered by the learned Additional Sessions Judge.

5. It appears from the papers those have been produced that initially offence was registered under Section 306 of the Indian Penal Code, however, taking into consideration the age of deceased, it was altered to Section 305 of the Indian Penal Code. The FIR has been lodged by the father of the deceased who had committed suicide on 13th February 2022 at about 9.00 p.m. Suicide was committed in a room of the lodge which belongs to the informant. It is stated that deceased was taking education in Jain International School, Jamner, District-Jalgaon. He used to sit in room No.1 of the lodge and study on certain occasions. At about 9.00 p.m. on 13th February 2022 when informant was at home, he received information that his son has committed suicide and therefore, he went to the said place. He found that the son was made to lie on the cot. The informant gathered information from his brother that when the deceased was not

responding from the room it was seen from the window as to what he was doing and then it was found that he has hanged himself to the ceiling fan. Then the door was forcibly opened and he was brought down. Police were called and then the deceased was taken to the hospital where he was declared dead.

6. Informant further states that at about 3.00 p.m. on 10th February 2022 the deceased got down from school bus in front of the hotel and at that time respondent No.2 went near the deceased and slapped him. She was asking as to why deceased has sat on the bench in the school which was for her daughter. It is then stated that when the informant's brother and some other persons were asking respondent No.2 as to why she is assaulting the deceased, then at that time respondent No.2 stated that the deceased would be rusticated and threatened that deceased would be killed by her relatives. Respondent No.2 was persuaded and was allowed to go and the deceased was also brought to the room. Deceased was crying and telling that he was not at fault and has not done any act. The informant says that thereafter the son was not eating anything and was frightened to go to school, however, no complaint was filed with the Police Station.

According to the informant, respondent No.2 has abetted the commission of suicide by the deceased.

6. Taking into consideration these allegations, it was observed by the learned Additional Sessions Judge that it was the single incident of dated 10th February 2022 and therefore, whether it amounts to abetment will have to be considered. It was also considered that the applicant therein (present respondent No.2) is a woman and no criminal antecedents were there. It was also then considered on prima facie basis that the intention of the applicant was to question as a mother and then opinion has been expressed that no *mens rea* can be attributed to the applicant therein. The fact is also taken into consideration that the incident has taken place on 10th February 2022 and suicide was committed on 13th February 2022. Reliance was then placed on the decision in **Rahul Raj Singh** (supra).

7. There is no illegality or error committed by the learned Additional Sessions Judge in considering those points. Naturally those points were the outcome of or necessary points to be considered while deciding the application for anticipatory bail. When there is no account of the activities of the accused on 11th February 2022 and 12th February 2022 and after a gap of three

days when unfortunately the minor boy has taken extreme steps, then this could not have been contemplated by anybody. The mental condition of the minor for two days has been stated only in one line. What efforts the informant had done to ease out the boy are not there. Even if a wrong incident has taken place, how to bring out from the said incident and to bring the son to normalcy was also on the informant. Those accounts are missing. Unless and until there is proximity between the alleged incident and the suicide, whether it can attract Section 107 and / or Section 306 of the Indian Penal Code, would be a question. The custodial interrogation of respondent No.2 was not required though the offence can be said to be a serious one. All these points were considered and therefore, there is no illegality in the order. Cancellation of bail can be done only in exceptional circumstances. Herein this case a well reasoned order has been passed and therefore, there is no question of interference.

8. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]