

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

ANTICIPATORY BAIL APPLICATION NO.1164 OF 2021

Ishwar Atmaram Javane

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

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

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 18th JANUARY, 2022

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No. 554 of 2021 registered on 26th August 2021 with Karjat Police Station, Taluka-Karjat, District-Ahmednagar for the offence punishable under Section 306 of the Indian Penal Code.

2. It has been vehemently submitted on behalf of the applicant that the First Information Report lodged by the uncle of the deceased would indicate that the present applicant was concerned with the acts done by the deceased with the daughter

of the applicant. He was taking objection that the deceased is unnecessarily harassing applicant's daughter by giving phone calls. He made request to the informant and the father of the deceased that they should give advise to the deceased and in spite of such request when the acts of deceased continued, the applicant had called the informant and the father of the deceased to meet him. There is no question of instigation as contemplated under Section 107 of the Indian Penal Code which is one of the necessary ingredient to prove offence under Section 306 of the Indian Penal Code. The custodial interrogation of the applicant is not required and the applicant has co-operated to the police when interim protection was granted to him.

3. Learned APP strongly opposed the application on the ground that the way the applicant had communicated the things amounted to instigation. In the First Information Report it has been stated that the applicant had gone to the house of the father of the deceased at about 7.00 p.m. on 22nd August 2021 and in a insisting way he had stated that deceased was giving trouble to his daughter by giving frequent phone calls and the deceased will not be left by the applicant. It was then stated that the applicant would kill his daughter and the dead body would be thrown in front of the house of the deceased and First

Information Report would be lodged by saying that she has been killed by the deceased. Therefore, the informant states that since that date deceased was under tension. Thereafter, on 24th August 2021 also the applicant had called the informant to his house under the pretext that deceased is still giving phone calls to his daughter. Even at that time the informant had told the applicant that deceased is missing since 9.30 a.m. and he would come to meet the applicant in the afternoon. Accordingly, the informant along with his brother and another nephew went to Diksal at 3.00 p.m. Even at that time the applicant told that the deceased is still calling his daughter and they (informant's family) should convince deceased Mahesh and the applicant would take care of the daughter. Further, it was stated that if the deceased expires then it would be the responsibility of the informant and if the daughter expires then it would be the responsibility of the applicant. After persuading the applicant the informant returned and then he says that they were searching for deceased Mahesh but he could not be found and therefore, missing complaint was lodged. His dead body was found around 6.30 a.m. on 26th August 2021. Thus, there are allegations of instigation against the applicant and therefore, taking into consideration the seriousness of the offence, his physical custody is required for

the purpose of investigation. He does not deserve anticipatory bail.

4. It will not be out of place to mention here that learned Advocate for the applicant has taken this Court through the First Information Report that was lodged by the daughter of the applicant on 25th August 2021 against the deceased with the same Police Station for the offence punishable under Section 354-D of the Indian Penal Code and Section 11 and 12 of the Protection of Children from Sexual Offences Act.

5. It appears from the First Information Report that was lodged by the daughter of the applicant that the deceased was calling her on the Mobile phone and she states that she was refusing the deceased to talk but still he was giving phone calls and because of the said harassment, the daughter had informed the said fact to the father. Being the father definitely the applicant would have had taken up the matter with the family members of the deceased. Even for the sake of arguments if we take statements allegedly made by the applicant as narrated in the First Information Report as they are, yet whether that amounts to instigation or abetment as contemplated under Section 107 and/or Section 306 of the Indian Penal Code, is

required to be considered. The only fact that requires to be highlighted is that deceased might have come to know what the applicant had told to the father and the informant on 22nd August 2021. But as regards what the applicant had told to the informant on 24th August 2021 around 3.00 p.m. whether it was disclosed to the deceased or not is a question. Informant states that when he had received phone call at about 10.00 a.m. from the applicant he disclosed that the deceased is missing since 9.30 a.m. Three persons went to meet the applicant around 3.00 p.m. at Diksal but deceased was not amongst them nor even the father of the deceased. Thereafter he says that after the dialogues between them, informant and others returned to Mirajgaon and they were then searching deceased Mahesh till 8.00 p.m. They could not find him and therefore lodged the missing report. Then whether whatever was stated by the applicant on 22nd August 2021 can be said to be soon before the alleged suicide and whether it amounts to instigation would be the point that is required to be decided at the time of trial and it is also then required to be got explained from the medical expert as to what was the approximate time of death of Mahesh. If one consider the postmortem report, it states that there were signs of decomposition but the rigor mortis was absent. To the column

18-A which is in respect of "can you say definitely that the injuries shown against serial No.17 and 18 are ante-mortem injuries?" It has been stated as not applicable. Opinion in respect of probable cause of death is reserved and viscera is preserved. Therefore, around 3.00 p.m. on 24th August 2021 whether Mahesh was alive and whether what was stated by the applicant to the informant at Diksal was made known to Mahesh, is also a matter of evidence.

6. Therefore, taking into consideration these factors, the physical custody of the applicant is not required for the purpose of investigation. Investigation can go on by making him available for the purpose of investigation. With these observations, following order is passed:-

O R D E R

- i) Application stands allowed.
- ii) In the event of arrest of applicant – Ishwar Atmaram Javane in connection with Crime No. 554 of 2021 registered on 26th August 2021 with Karjat Police Station, Taluka-Karjat, District-Ahmednagar for the offence punishable under Section

306 of the Indian Penal Code, he be released on bail on P.R. Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) The applicant shall remain present before the Investigating Officer on every Monday and Thursday between 10.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) The applicant shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]