

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 621 OF 2021

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH
SUBHASH
KULKARNI
Date: 2022.08.24
18:09:58 +0530

Kinjal Ritesh Bhansali ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Niranjan
Mundargi, i/b Ashish Pandey, for the Applicant.
Mrs. M. R. Tidke, APP for the State/Respondent no.1.
Mr. Mubin Solkar, a/w Akash Tawade, for Respondent no.2.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 14th JULY, 2022

PRONOUNCED ON: 24th AUGUST, 2022

ORDER:-

1. This is an application for pre-arrest bail in connection with CR No.532/2020, registered with Kamothe Police Station, Navi Mumbai, for an offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

2. Applicant's marriage was solemnized with Ritesh Bhansali, the co-accused, in the year 2014. Jyoti Bhansali was the mother of Ritesh. Since before marriage, Ritesh (A1) and his parents had been residing at A-603, Pratham Heritage Society, Kamothe, Navi Mumbai. Narendra Bhansali, the father of Ritesh passed away in the year 2013. The said flat stood in the name of Ritesh (A1) and his late father Narendra. Jyoti, the mother of

Ritesh, was made the nominee of late Narendra Bhansali's interest in the said flat.

3. Post marriage of the applicant with Ritesh (A1), it is alleged, Ritesh (A1) exerted pressure on Jyoti, to give consent for transfer of the said flat in the name of Ritesh (A1), as a full owner thereof. Jyoti did not cave in to the said demand. Therefore, Ritesh (A1) and Kinjal, the applicant herein, subjected Jyoti to severe harassment. As the ill-treatment became unbearable, on 6th November, 2022, Jyoti allegedly committed suicide by drowning herself in Kamothe lake.

4. Dipak Parekh (the first informant), the brother of Jyoti, lodged report with the police on 5th December, 2020 alleging that upon refusal of Jyoti to give consent to nominate Ritesh (A1) as the absolute owner of the flat, in the record of the society, Ritesh (A1) and the applicant severely ill-treated the Jyoti. Especially, the applicant used to rake up quarrels with Jyoti on trivial issues. The applicant behaved arrogantly with Jyoti. She shouted at her. She humiliated her. Jyoti, according to the first informant, used to narrate her woes to the first informant in personal meetings as well as on phone. The first informant alleged to have had record of the telephonic conversations which he had with Jyoti on 1st June, 2020 and

28th October, 2020. During the course of those conversation Jyoti had allegedly informed the first informant that Ritesh (A1) and Kinjal, the applicant, were threatening to oust her from her house. She was even threatened that she would be put behind the bar. On 28th October, 2020, which happened to be the birthday of Jyoti, the latter had stated that fed up with the ill-treatment, she had made preparation to commit suicide on that day, but prevailed over her suicidal feelings so that her birthday should not turn out to be the last day of her life. The first informant alleged, on account of the ill-treatment meted out to Jyoti, the latter committed suicide. Ritesh (A1) and the applicant, thus, abetted the commission of suicide by the deceased Jyoti.

5. Crime was registered at CR No.532 of 2020. During the course of investigation, the Investigating Officer recorded the statements of sisters and sister-in-law of Jyoti. The transcripts of telephonic conversation/between the Jyoti and the first informant were collected. Ritesh (A1) came to be arrested on 6th February, 2021. Apprehending arrest, the applicant preferred this application.

6. By an order dated 5th March, 2021, this Court was persuaded to grant interim protection noting, *inter alia*, that

there was a delay of about one month in lodging the FIR and Ritesh (A1), the husband of the applicant, had already been arrested.

7. I have heard Mr. Mundargi, the learned Senior Counsel for the applicant, Mrs. Tidke, the learned APP for the State and Mr. Solkar, the learned Counsel for the first informant. The learned Counsels have taken me through the report under Section 173 of the Code and the documents annexed with it.

8. Mr. Mundargi, the learned Senior Counsel, would submit that the allegations against the applicant are of general nature. The alleged motive for harassment of the deceased, namely, the refusal of the deceased to give consent for transferring the interest of her deceased husband in favour of Ritesh (A1), is primarily attributable to Ritesh (A1). Mr. Mundargi submitted that allegations in the FIR as well as the statement of the sisters and the sister-in-law of Jyoti, recorded during the course of investigation, are required to be appreciated in the light of general tumultuous nature of the relationship between mother-in-law and daughter-in-law. Since the investigation is complete, and Ritesh (A1), the husband of the applicant, was already arrested, thereby facilitating investigation as regards the motive for the alleged crime, custodial interrogation of the applicant is

not warranted. Therefore, the applicant deserves the exercise of discretion, submitted Mr. Mundargi.

9. Mrs. Tidke, the learned APP, would submit that in the backdrop of the allegations and the fact that the witnesses have consistently deposed that the deceased used to narrate that the ill-treatment at the hands of the accused had become so unbearable that she had suicidal inclination, a clear case of abetment to commit suicide was made out. Mrs. Tidke submitted that the role attributed to the applicant is equally, if not more grave, qua Ritesh (A1). Therefore the applicant does not deserve the exercise of discretion.

10. Supplementing the submissions of the learned APP, Mr. Solkar, the learned Counsel for the first informant,, strenuously submitted that the allegations in the FIR and the statement of the sisters of deceased indicate that it was the applicant, who was more vicious in her harassment of the deceased.

11. To add to this, the transcript of the telephonic conversation between the first informant and the deceased sheds light on the nature of the harassment to which the deceased was subjected to. Deceased was threatened that she would be put behind the bars. Often the applicant threatened to throw the deceased out of her own house. There are

allegations of verbal abuse and physical harassment as well. By such conduct the applicant can but be said to have abetted the commission of the suicide. Hence, she does not deserve pre-arrest bail.

12. To lend support to this submission, Mr. Solkar placed reliance on an order passed by this Court in the case of *Karuna Chaube and anr. vs. State of Maharashtra (ABA/621/2021, dated 4th March, 2021)*.

13. I have given my anxious consideration to the rival submissions. Surely and without risk of contradiction, the facts of the case at hand reflect both misery and misfortune of an elderly person in the evening of her life. As a matter of forensic enquiry, however, the moot question would be whether the allegations attributed to the applicant are of such potency as to disentitle her from pre-arrest bail?

14. Firstly, the aspect of delay in lodging the report deserves consideration. Indeed, the FIR came to be lodged after about one month of the alleged occurrence, by the brother of the deceased. In a case of this nature, where the allegations of harassment of a mother in the four walls of a house are made against her son and the daughter-in-law, ordinarily, the aspect of delay

simpliciter pales in significance. Nonetheless, the question of embellishment and improvement becomes relevant.

15. If the allegations in the FIR are construed keeping in view the aforesaid factor, it becomes evident that the alleged harassment and ill-treatment was consequent to the refusal of the deceased to relinquish her interest in the flat after the death of her husband. The allegation of coercing the deceased to relinquish her claim over the said flat is primarily directed against Ritesh (A1). It is imperative to note that none of the sisters of the deceased namely Dipti Desai, Kokila Parekh and Tarulata Shah, have stated that the refusal of the deceased to give up her claim over the flat was the cause for the alleged harassment. The abovenamed sisters of the deceased stated that the applicant did not like the fact that the deceased continued to stay with them. The applicant allegedly harassed the deceased over trivial issues.

16. Mr. Mallesh Bhat, the Chariman of the Society, wherein the said flat is situated, however, stated before the police that on 18th January, 2021, the deceased had given a letter to the effect that the society should ensure that after the death of her husband she should continue to have claim over the said flat

and nobody should oust her therefrom. This shows that the deceased apprehended that she might be thrown out of the flat.

17. In the light of the aforesaid allegations, I have perused the transcript of the alleged conversation between the first informant and the deceased. The conversation dated 1st June, 2020 indicates that Ritesh (A1) and the applicant were not getting along well. There were constant quarrels between Ritesh (A1) and the applicant. After the applicant allegedly perceived that Ritesh (A1) was leaning towards the deceased, the applicant started to rake up quarrels with the deceased alleging that the deceased was poisoning the mind of Ritesh (A1). In the said conversation, the deceased further apprised the first informant that Ritesh (A1) had threatened to put her behind the bars.

18. The transcript of the conversation between the deceased and the first informant dated 28th October, 2020 indeed shows that the deceased was in a disturbed state of mind and claimed that she had even made preparation to commit suicide on that day. There are allegations against the applicant of passing taunts and abusing the deceased and her relatives.

19. At this stage, it would be apposite to note that to fall within the dragnet of the offence punishable under Section 306 of the Penal Code, there ought to be evidence of abettment as

contemplated under Section 107 of the Penal Code, on the part of the accused, with an intent to bring about the consequence of suicide by the victim. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is the linchpin of the offence punishable under Section 306 of the Penal Code. In a fair majority of the cases, the allegation of abetment revolves around the attribute of “instigation”. Etymologically “to instigate” means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another, when the former actively suggests or stimulates the latter to an act by words or action, direct or indirect. It may be express or subtle; characterized by conduct. Where the allegation is of abetment by subjecting the deceased to harassment, the element of mental state of the accused is as important as that of the temperament and state of mind of the deceased. The level of sensitivity of the deceased also assumes significance.

20. In the case of *M. Arjunan vs. State*¹, the Supreme Court elucidated the essential ingredients of the offence punishable under Section 306 of the Penal Code in the following words:

“7. The essential ingredients of the offence under Section 306 IPC are: (i) the abetment; (ii) the intention of the

1(2019) 3 SCC 315.

accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 I.P.C.”

21. In the case of *Ude Singh and others vs. State of Haryana*², after an elaborate survey of the previous precedents, the Supreme Court postulated the ingredients of abetment and expounded the legal position in the following words:

“15. Thus, “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when:

- (i) he instigates any person to do that thing; or
- (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or
- (iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not,

2(2019) 17 SCC 301.

could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."

22. Reverting to the facts of the case, at this stage, the material on record, *prima facie*, indicates that the principal allegation of subjecting the deceased to harassment with a view to coerce her to relinquish her share in the flat is attributable to her son Ritesh (A1). The allegations against the applicant have, their genesis, in turn, the quarrels between the applicant and her husband Ritesh (A1). Indeed there are allegations of humiliation and verbal outbursts against the applicant. However, those allegations are required to be viewed through the prism of fractious relationship which the deceased shared with the applicant. Whether the alleged harassment was with intent to “goad” and “provoke” the deceased to end her life would essentially be a matter for trial.

23. At this stage, especially in the context of arrest of Ritesh (A1) and completion of investigation, taking the prosecution case at its stands, custodial interrogation of the applicant does not seem warranted. Mr. Solkar, the learned Counsel for the first informant, made an endeavour to impress upon the Court that custodial interrogation of the applicant is imperative to seize the documents and shed light on the circumstances in which the deceased was left with no option but to end her life. I am afraid to accede to the aforesaid submission. As indicated above, the

allegation of harassing the deceased with a view to coerce her to relinquish her interest in the subject flat is predominantly against Ritesh (A1), who had already been subjected to custodial interrogation. I am, therefore, persuaded to exercise the discretion in favour of the applicant.

24. Hence, the following order:

: O R D E R :

(i) The order of interim pre-arrest bail dated 5th March, 2021, is made absolute on the terms and conditions incorporated therein.

(ii) In addition;

(a) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(b) The applicant shall cooperate with the investigation and report to the Investigating Officer as and when directed.

(c) The applicant shall regularly attend the proceedings before the jurisdictional Court.

[N. J. JAMADAR, J.]