

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 999 OF 2022**

Suraj Mohan Pardeshi .. Applicant
Versus
The State of Maharashtra .. Respondent

**WITH
BAIL APPLICATION NO. 953 OF 2022**

Pravin Ragunath Walimbe .. Applicant
Versus
The State of Maharashtra .. Respondent

**WITH
BAIL APPLICATION NO. 1394 OF 2022**

Assir Amin Imamuddin Kazi .. Applicant
Versus
The State of Maharashtra .. Respondent

Dr. Abhinav Chandrachud, Mr. Shubham Avhad, Mr. Anuj Tiwari, Mr. Aditya Talpade, Mr. Pratik Karande for the applicant in BA No. 999/22

Mr. Shivraj Kunchge for applicant in BA No. 953/22

Mr. Rajendra Rathod i/b Mr. Ali Bubere for applicant in BA No. 1394/22

Ms. A.A. Takalkar APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 6th SEPTEMBER 2022**

P.C:-

1. The three applicants seek their release on bail, on being charged for the offences punishable under sections 306,

170, 420, 384, 388, 389, 506, 120 (B) read with 34 of IPC.

They were arraigned as an accused in C.R.No 791 of 2021 which came to be registered with Amboli Police Station, on being informed that Salma @ Sanjana @ Zara Khatun, aged 28 years, has committed suicide on 23/12/2021, and the accused persons are responsible for abetting her suicide. Applicant Suraj Pardeshi came to be arrested on the very same day on registration of the C.R, whereas applicant Pravin came to be arrested on 25/12/2021. Assir Kazi came to be arrested on 31/12/2021, and on completion of investigation, they all are charge-sheeted.

In order to ascertain the involvement of the applicants in the subject C.R, a brief reference is necessary to be made to the case of the prosecution.

2. On 23/12/2021, A.D. No. 57/2021 came to be registered, since deceased Salma informed her friend Danish Shaikh at 9.00 am that she was committing suicide and he informed the control room. When Danish accompanied with his friend Vighnesh, reached her house, where even the police were found, the door of the flat was opened, and Salma was found hanging to the fan in the bedroom. She was brought to the Trauma Care Hospital, Jogeshwari, but at 9.43, she was declared dead.

3. The investigating machinery was set into motion and the name of the applicants surfaced during the course of investigation, when statements of those associated with the deceased came to be recorded.

Statement of Danish Shaikh recorded and compiled in the charge-sheet is to the effect that on 21/12/2021, he received a phone call from one Tanvi Tandon who informed him that she along with Salma and Assir had gone to a party organized in Hotel Grand Hyatt, Mumbai and an NCB raid was laid and they left the party. The three friends were under tremendous tension and therefore, they went to meet Salma in a Hotel in Malad and he was apprised of the raid conducted in Hotel Grand Hyatt.

Danish state that on invitation of Assir, (applicant in BA No. 1394/22) friend of Salma, they had gone to the Hotel in a car belonging to Vighnesh and on reaching the hotel, they found Assir waiting. Thereafter, they were taken to the fourth floor and Assir was introduced to them. After half an hour, Salma left the hotel by informing that she is going to meet Vighnesh and would return by 3'O clock, though she was persuaded by Assir to enjoy the party. Salma called up Tanvi and informed her that Assir would make the payment for attending the party and she should accept the payment due towards her and she was informed that an amount of Rs.20,000/- for each of them was to be received. She was instructed to accept the amount in cash or in the account.

As per version of Danish, the party was on, and they were dancing and Assir had drugs and he was repeatedly making phone call to Salma who arrived in the hotel at 3.O' clock. Salma inquired why the amount was not paid to Tanvi and in the mean time, the door of the room was knocked and one person

entered into the room and flashed his NCB card and make enquiry about the party.

As per Danish, the said person accompanied with his team, demanded a sum of Rs.20 lakhs, for riffraff and Salma was pleading with the so-called person (Suraj) not to take any action. Thereafter, some negotiations took place and it was agreed that Rs.10 lakhs, would be paid by the three girls. Thereafter, it is alleged that the brother of Assir Kazi, Nophel agreed to make payment of Rs.10 lakhs through Hawala to the impersonating Officer of NCB, who is identified as Suraj Pardeshi (Accused in BA No.999/22).

Assir started blaming Salma that she was instrumental in the raid and even her friend was accused for arranging the raid. After some time, Nophel returned back and stated that he had paid Rs.Two lakhs to the NCB Officer and asked them to divide the amount. Salma was fixed upto the responsibility of Rs.12 lakhs. Thereafter, Salma and Assir left the place by car. Salma then disclosed that raid was conducted by Vighnesh but she was not ready to disclose her location. A quarrel took place between Tanvi and Salma on the ground that Vighnesh was instrumental in the raid. According to Danish, he received a phone call from Salma who appeared to be in a disturbed frame of mind and when he met Tanvi, it was revealed to him that Salma was told that Rs.Three lakhs was given to the NCB Officers and they were demanding more money.

4. The longish statement of Danish, describing the state of mind of Salma, is the basis of the implication of accused

persons, as it is alleged that the raid was conducted by accused Suraj, who impersonated as NCB officer, and he was accompanied by accused Pravin, whereas Assir is a person who is alleged to have organized a party and invited Salma and her friends.

On the basis of another statement of Tanvi, who also corroborate the raid by the NCB Officers, the applicants are arraigned as accused. Tanvi also state that Salma had disclosed to her that she had paid Rs.Three lakhs to the NCB Officers and he is demanding more money. Tanvi, however, state that a quarrel took place between herself and Salma, when she visited her and noticing that she was present with Danish, she became violent. She hid herself in the bathroom since she was scared that she had disclosed to her friend Vighnesh about her affair with Akbar, Salma also made a phone call on number 100. Tanvi called Vighnesh and when they were leaving the room, Salma was violent and attempted to cause harm to her. When she left for the Airport along with Vighnesh, and she received a call from Salma at 5.50 am, but she did not answer, but Vighnesh informed her that she had taken Salma to her house and she was heavily drunk and subsequently she came to know that she had hanged herself.

5. Another statement corroborating version of Tanvi which is compiled in the charge-sheet is of Vighnesh, who stated that he was into drug business and was a money lender by profession. He was known to Salma and despite he knowing about his marriage, he had proposed him on her birthday. He

categorically admitted that they maintained physical relationship. He referred to an incident of 20/12/2021 when Salma along with her friends went to attend the party by a car belonging to his friend. On next day i.e. 21/12/2021, in midnight she came to his house at 1.30 am, and left for Grand Hyatt hotel at 3'O clock and she informed him that her girls were demanding more money from the customers and therefore, she had to leave. She informed Vighnesh about the alleged raid and abruptly, she disconnected the phone, while she was crying. She called Vighnesh and accused him of arranging the NCB raid and she indulged into a quarrel with him. When he went to meet her, Tanvi and Salma were in the car and Salma stepped out of the car and sat on his scooter. When Vighnesh scolded her for indulging in illegal activities, she jumped from the scooter, as she was under the influence of liquor and by catching a rickshaw, she went ahead. She did not return home, but stayed in the hotel. Her mobile was broken when she jumped from the scooter. Salma went to quarrel with Tanvi and when she reached there, she had caused destruction in the hotel. Tanvi had expressed apprehension that Salma would again assault her and therefore, he went to drop her at the Airport. On his way, there was a telephonic conversation with Salma about a fixed deposit of one and half crore. She informed him that she was consuming alcohol in a hotel at Versova. In the mean time, thereafter, Danish brought Salma to Oshiwara police station, when she was under the influence of liquor and vomiting. He carried her to her house and remained with her for half an hour and made an attempt to sober her. They had sex. At that time, she expressed

her apprehension that she will be roped in the NCB raid and if the amount was not given to Assir, she apprehended that she would be defamed. He consoled her by stating that he would arrange for the money and left her house.

6. Apart from the statements, the CCTV footage of Hotel Grand Hyatt has also been compiled in the charge-sheet which corroborate the version of the witnesses. From the material collated in form of the statement of the witnesses, it can be seen that an NCB raid was conducted in the hotel but ultimately what can be seen is that the deceased was to contribute a sum of Rs.2 to 3 lakhs. Assuming for a moment that such a demand was made, the question that arises for determination is whether the accused persons, the applicant Suraj and Pravin who are alleged to be the part of the raid, and Assir who is accused of assisting conduct of the raid can be held to have abetted for suicide.

From the statement of the witness, it is apparent that from the night of 20th December 2021, she underwent through various events including her unstoppable consumption of liquor and her fight with Tanvi as well as her altercation with her boyfriend Vighnesh, as Tanvi is alleged to have informed Vihgnesh about her affair with some other person. Prima facie, from the statements of the witnesses, it appear that the deceased was supplying girls and had visited the hotel along with her friends on the invite of Assir on payment of money.

7. As far as Section 306 IPC is concerned, it is a settled position of law that the twin requirement of the offence of

Section 306 IPC, is commission of suicide and abetment to commit suicide.

Abetment as contemplated under Section 107 of IPC, necessarily involve some active suggestion or support in commission of the act. The word 'instigate' means to goad, urge, provoke, incite or encourage to do enact, and the person is said to instigate another when he actively suggest or stimulates him to the act by any means, or language, direct or indirect whether it takes the form of express solicitation, insinuation or encouragement. The offence of abetment contemplate '*mens rea*' and there must be intentional doing/aiding the commission of suicide by another.

Recently, the Hon'ble Apex Court in case of Arnab Manoranjan Goswami Vs. State of Maharashtra, has summarized the law as regards abetment relating to commission of suicide in the following words :-

“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 Sections 306 IPC either in the FIR or in the so-called suicide note”

58. The court noted that the suicide note expressed

a state of anguish of the deceased “cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide”.

8. The essential ingredient of offence u/s.306 IPC being, the intention to aid or instigate or abet commission of suicide is conspicuous in lacking in present of prosecution. In case of alleged abetment, there must be proof of direct or indirect act/s of incitement to the commission of offence.

The cause of suicide by the deceased is a vexed issue and particularly, when her mood swings under the influence of liquor are depicted through the statement of various witnesses, and it can be seen that it is a result of complex attributes of human behaviour and responses/reactions. Between the night of 20/12/2021 to 23/12/2021, when the deceased committed suicide, various events which has surfaced on record, but they do not attribute instigation/incitement to the present applicants. Merely because she would face humiliation if caught in the raid, apparently do not appear to be the sufficient cause as after the incident of 20/12/2021, the deceased consumed liquor, indulged into fight with Tanvi as well her boyfriend, and she even had sex with her boyfriend and what prima facie appear, is a complex emotional out burst, as a part of her own personality which prompted her to take the extreme step. Applicant Suraj and Pravin who are alleged to have participated in the raid and demanded money, in any case, have only alleged to have demanded Rs.10 lakhs from three girls, and this apparently, is no

instigation as on the third day, she committed suicide. As far as Assir is concerned, since he is alleged to have organized the party, he cannot be said to be instigated as the deceased kept on accusing him that he was instrumental in the raid. She also accused Vighnesh of the same.

No positive evidence prima facie is noticed in the charge-sheet which would connect the present applicants to the suicide of Salma. The entire material in the charge-sheet would reveal no iota of evidence on the basis of which it can be inferred or construed that the applicants were party to criminal conspiracy in committing the alleged offence. It will be ultimately a matter of trial for the prosecution to establish the charge by cogent and reliable evidence by proving the ingredients of offence punishable u/s. 306 IPC.

9. Recording that the observations made are prima facie in nature and shall not influence the learned Judge while the applicants are tried in the subject C.R for abetment to commit suicide and other offences, the applicants deserve their release on bail. Hence, the following order :-

: ORDER :

- (a) Application is allowed.
- (b) Applicant- Suraj Mohan Pardeshi in BA No.999/22, Applicant- Pravin Ragunath Walimbe in BA No.953/22, Applicant- Assir Amin Imamuddin Kazi in BA No. 1394/22 shall be released on bail in connection with C.R.No. 791 of 2021 registered with Amboli Police Station on furnishing P.R.

Bond to the extent of Rs.50,000/- each with one or two sureties in the like amount.

The applicants shall be released on cash bail in lieu of sureties for a period of 6 weeks.

(c) The applicant shall attend the trial on regular basis.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicants shall give their contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(SMT. BHARATI DANGRE, J.)