

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1180 OF 2022**

Kotla Chinnappa Reddy .. Applicant

Versus

The State of Maharashtra .. Respondent

**WITH
INTERIM APPLICATION NO.3132 OF 2022
IN**

BAIL APPLICATION NO.1180 OF 2022

Kaushalya wd/of Omprakash .. Applicant
Bhavardas Swami

Versus

The State of Maharashtra & Anr. .. Respondent

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Mr.Vivek Kantawala with Mr.Jash Vyas, Mr.Amey Patil i/b
Mr.Jash Vyas for the Applicant.

Mr.S.H.Yadav, A.P.P. for the State/Respondent.

Mr.Sushil Upadhyay i/b Mr.A.M.Saraogi for the Intervenor.

API Darshan S. Patil, attached to Boriwali Police Station,
present.

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CORAM: BHARATI DANGRE, J.

DATED : 04th OCTOBER, 2022

P.C:-

1. The applicant is facing accusations under Sections 306, 406 and 420 of I.P.C., on one Omprakash Swami having committed suicide on 10/03/2021. In the subject C.R.

registered with Borivali Police Station, the applicant was apprehended from his residence at Andhra Pradesh on 19/02/2022. His bail application came to be rejected by the Sessions Court and, therefore, he is before this Court.

2. Learned counsel for the applicant would submit that the only material, which would indict him in the subject C.R., is a reference made in the suicide note, which was recovered from the pocket of the deceased. The suicide note, being seized under panchnama' contain the following averments.

“Vishnu Trading Vijaywada Mr.Chinnapa Reddy ने मेरे supplier का पैसा नहीं दिया और कई लोगोने मुझे बहुत परेशान किया है”

3. Learned A.P.P. and the learned counsel for the complainant would submit that the deceased was a commission agent and he is alleged to have acted as a middleman/intermediary between the applicant, who had purchased the goods from the alleged 25 garment dealers in Mumbai.

The statement of the employee of the deceased would reveal that the applicant had purchased the goods from the garment dealers, but had failed to make the payment to them. In any case, what the deceased was entitled, in the whole transaction was some commission and the entire amount was not due and payable to him or either by him. There would have been number of remedies available to the dealers, if there was failure to make payment, despite the alleged delivery in favour of the applicant.

Statements of various such dealers are recorded and compiled in the charge-sheet.

4. From these statements, it can be seen that the transaction took place in November, 2020. The statements of the dealers are to the effect that when the payment, which was to be paid within a period of 90 days, was not received, they established contact with the applicant, but he gave evasive answers and at subsequent point of time, even his mobile phone was switched off. Various statements on similar lines, are in the charge-sheet.

5. The proximity of the deceased taking extreme step of committing suicide on 10/03/2021 and the transaction effected in November 2020, failed to satisfy the test of abetment as contemplated under Section 107 of I.P.C.

The Hon'ble Supreme Court in the case of ***Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.***¹ as well as in the case of ***Madan Mohan Singh Vs. State of Gujarat***², has clearly culled out the necessary ingredients of Section 306 to the following effect:-

54. In a concurring judgment delivered by one of us (Dhananjaya Y. Chandrachud, J.) in the decision of the Constitution Bench in Common Cause, the provisions of Section 107 were explained with the following observations: (SCC p. 244, para 458) 99

"458. For abetting an offence, the person abetting must have intentionally aided the commission of the crime. Abetment requires an instigation to commit or intentionally aiding the

1 (2021) 2 SCC 427

2 (2010) 8 SCC 628

commission of a crime. It presupposes a course of conduct or action which (in the context of the present discussion) facilitates another to end life. Hence abetment suicide is an offence expressly punishable under Sections 305 and 306 IPC."

55. More recently in *M. Arjunan v. State*, a two-Judge Bench of this Court, speaking through R.Banumathi, J., elucidated the essential ingredients of the offence under Section 306 IPC in the following observations. (SCC p. 317, para 7)

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

56. Similarly, in another recent judgment of this Court in *Ude Singh Vs. State of Haryana*, a two-Judge Bench of this Court, speaking through Dinesh Maheshwari, J., expounded on the ingredients of Section 306 IPC, and the factors to be considered in determining whether a case falls within the ken of the aforesaid provision, in the following terms: (SCC pp. 321-22, para 16)

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

In light of the conclusive test, being led to the above extent by the Hon'ble Supreme Court, the accusations levelled against the applicant, *prima facie*, fall short of them. The applicant, though may take the consequences of the accusations if prosecution is able to demonstrate the ingredients of the said offence. However, on the investigation being completed and the charge-sheet filed, he need not remain further incarcerated.

6. Needless to state that the observations made above are, *prima facie*, in nature and limited to the extent of adjudication of the present application and the learned Judge trying the applicant for the offences with which he is charged, shall not get influenced by the above observations, in any manner.

: ORDER :

- (a) Application is allowed.
- (b) Applicant -Kotla Chinnappa Reddy shall be released on bail in connection with C.R.No.407 of 2021 registered with Borivali Railway Police Station on furnishing P.R. Bond to the extent of Rs.50,000/- with one or two sureties in the like amount.

The applicant shall be released on cash bail for a period of eight (8) weeks. During the said period, he shall arrange for the sureties.

- (c) Till the applicant furnishes surety, he shall mark his attendance before the concerned police station on first Monday of every month between 11.00 a.m. to 12.00 noon. On furnishing surety, he shall attend the

concerned police station on first Saturday of every trimester between 11.00 a.m. to 12.00 noon till framing of charge and, thereafter, shall abide by the directions issued by the trial Court.

(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 applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

7. In view of the disposal of the application, interim application does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)