

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3228 OF 2021

Santosh Dhondu Gurav .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Raviraj Paramane for the Applicant.

Ms.S.S.Kaushik, A.P.P. for the State/Respondent.

PSI Shri Vaibhav R. Chumbale attached to Tilak Nagar Police Station, Thane, present.

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CORAM: BHARATI DANGRE, J.
DATED : 10th MARCH, 2022

P.C:-

1. Heard the learned counsel for the applicant and the learned APP.

With the assistance of the respective counsel, I have perused the charge-sheet which compile the material against the present applicant, who is charged with the offence punishable under Section 306 read with Section 34 of the Indian Penal Code.

2. The deceased is one Mandar Veralkar, who hanged himself by the ceiling fan in his house on 31/03/2020., pursuant thereto, an ADR was registered.

The deceased was residing with his mother Smt.Arati Veralkar and after the incident took place, she gave a statement that she is in extreme grief and is not in a position to record any statement. She also stated that her elder brother Dinkar Malvankar takes all decisions for her and she would only give her statement in his presence.

3. After the incident, on 13/06/2020, Smt.Arati Veralkar recorded her statement and in respect of the act of suicide by her son, wherein she state that the deceased was introduced to the present applicant, from whom he had borrowed a sum of Rs.13,44,000/- in June 2018, at the interest rate of 12.5%. She further state that the documents of the house of his friend, Sujay Dalvi (the co-accused) as well as of her sister-in-law, Geeta Veralkar were kept as security as against the loan obtained and the said two persons acted as mediator in the transaction. According to her, the amount was repaid to the applicant by her son and she give the details of such payment, which is effected in cash and on two occasions by bank transfer. According to her, as against the loan of Rs.13,44,000/-, an amount of Rs.17,81,600/- came to be paid to the applicant.

She allege that despite the amount being refunded, the present applicant through Sujay Dalvi was threatening him and this mounted mental pressure upon her son. She make a reference to the incident dated 28/03/2020, when an attempt was made to reconcile the difference, but at that time, it is alleged that the applicant demanded further sum of Rs.15,00,000/- and the applicant and Sujay Dalvi were

constantly threatening her son. This constant harassment compelled him to take his life on 31/03/2020, when he hanged himself, is her allegation.

4. On the basis of the said complaint dated 13/06/2020, the offence came to be registered by Tilak Nagar (Dombivali) Police Station on 15/07/2020 under Section 306 read with Section 34 of the IPC against the present applicant and Sujay Dalvi. On completion of investigation, the charge-sheet came to be filed, which compile various messages exchanged between the deceased and the applicant.

5. The charge-sheet compile the statements of the relatives of the deceased, including Smt.Geeta Veralkar and Shri Dinkar Jagannath Malvankar, the brother of the complainant. Their statements are identical to the statement of the complainant where they state that an amount of Rs.13,44,000/- was borrowed from the present applicant, but it was returned on 08/07/2019 alongwith the interest.

6. Learned counsel for the applicant submits that the applicant possessed a licence for money lending under the Maharashtra Money-Lending (Regulation) Act, 2014 and the license was valid from 01/04/2018 to 31/03/2019. Learned counsel for the applicant state that as a part of his business, he had advanced amount to the deceased, when he was in need of money. He has placed on record the receipts of the amount, which he has received from the deceased and from his bank

statement, which is a part of the charge-sheet, it can be seen that apart of the loan of Rs.13,00,000/-, an amount of Rs.18,00,000/- was borrowed by the deceased and the co-accused, on 26/04/2018 and out of which, deceased Mandar received a cheque of Rs.9,00,000/- and out of this, an amount of Rs.10,00,000/- was refunded. As regards the amount of loan which was provided to the deceased to the tune of Rs.13,00,000/-, the bank entry reflects that the applicant had to obtain gold loan from Muthoot Finance and only on obtaining the said amount of Rs.12,92,900/-, he disbursed the loan in favour of the deceased. As far as the amount of Rs.13,00,000/- is concerned, learned counsel submits that the said amount was refunded.

The unpaid amount was in respect of the transaction dated 26/04/2018, when Rs.9,00,000/- was disbursed in favour of Sujay Dalvi and Rs.9,00,000/- was disbursed in favour of the deceased. The said amount is still unpaid, since 2018 and is accruing interest.

There is no mention in the statements of the witnesses about the said loan obtained by the deceased. Pertinent to note that the deceased had even submitted the property documents of Sujay and when the amount was demanded back, Sujay was interested in getting house his released from the mortgage and he was also putting pressure upon the deceased to pay back the amount.

7. Perusal of the material in the charge-sheet would reflect that the applicant was into money-lending business and both,

the deceased and accused Sujay had borrowed the amount from him and the amount was outstanding.

The applicant faces a charge of Section 306 of the IPC i.e. abetment of suicide. By this time, it is a settled position of law that if a financial institution or any person under the valid license for money-lending, lend some money to a borrower and if the amount is not repaid and if he seeks its repayment, it cannot be construed as an harassment and, surely, not an instigation to commit suicide. Learned counsel for the applicant has rightly placed reliance upon the judgment of Division Bench of this Court in the case of *Amit s/o Ashok Naharkar Vs. State of Maharashtra & Anr. [2018 ALL MR (Cri) 4768]* as well as in the case of *Rohit s/o Nawanath Nalawade Vs. The State of Maharashtra & Anr. (Cri. Application (APL) No.1052 of 2018 decided on 17/12/2020).*

8. The offence under Section 306 contemplates an abetment, which has to be understood as defined under Section 107 of the Penal Code, which contemplates aiding, instigating or abetting the deceased to commit suicide. Merely demanding money back, cannot be construed to be falling in either of the ingredients of the said Section to attract abetment, as understood in law.

9. In the wake of the aforesaid facts, when the amount of Rs.9,00,000/- advanced to the deceased remained unpaid till this date and if the applicant was demanding back the amount, *prima facie*, he cannot be found guilty of offence of abetting the

suicide. Furthermore, the mother of the deceased did not record the statement immediately, but after a period of three months she has come forward to record the statement, alleging that her son had borrowed the sum of Rs.13,44,000/-, which was repaid. However, she does not state about the amount of Rs.9,00,000/- which was advanced by the applicant to her son and Rs.9,00,000/- to the other accused in the crime. Since the said amount remained unpaid on the date on which the deceased committed suicide, which has no mention in the statement of the complainant and, particularly, when the investigation is complete, the incarceration of the applicant is unnecessary. In my considered opinion, he deserves to be released on bail, subject to the following condition.

: **ORDER** :

- (a) The application is allowed.
- (b) Applicant - Santosh Dhondu Gurav shall be released on bail in C.R.No.I-145 of 2020 registered with Tilak Nagar Police Station, Dombivali, Thane on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

- (d) The applicant shall make himself available as
and when required by the Investigating Officer.
- (e) The applicant shall attend the trial regularly.

(SMT. BHARATI DANGRE, J.)