

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 924 OF 2023

Balaji s/o Kishanrao Patil

Applicant

Versus

The State of Maharashtra

Respondent

Mr. S. B. Bhapkar, Advocate for the applicant.

Mr. S. P. Sonpawale, APP for the State.

Mr. V. S. Kadam, Advocate for the informant.

CORAM : R. M. JOSHI, J.

DATE : 6th SEPTEMBER, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No.169/2023 registered with Vimantal Police Station, Dist. Nanded, for the offence punishable under Section 306 read with Section 34 of Indian Penal Code.

2. First informant is the wife of deceased who narrated the occurrences on 12th May, 2023 and 13th May, 2023. It is her contention that on 12th May, 2023, at about 7.30 am, deceased left home and informed her that he will go to his office. On that day, he did not return back home. On the next day, at about 7.00 am, he informed her about he being at Parbhani and that he will come back

to Nanded. At about 6.47 pm, one WhatsApp message was received by her from her husband stating that some amount was due from the persons named in the message and that he is tired of demanding money from them and hence, it is taking extreme steps and for that they are responsible. Later on, she received information about her husband being found near Hitech city. When she went there, she found her husband in unconscious state. He had consumed some poisonous substance. It is also stated in the report that the mobile phone of her husband was with her and that she had seen one photograph of a chit written by her husband wherein he stated that applicant had threatened him and asked him to die and therefore, he decided to commit suicide.

3. Learned counsel for the applicant submits that the co-accused are enlarged on bail and hence present applicant is entitled for bail on parity. It is further submitted that the First Information Report clearly indicates that the deceased just before committing suicide sent message to his wife holding the co-accused responsible for his death. It is submitted that name of the present applicant is not mentioned in the said message which indicates that he is not responsible for it. It is further argued that though the wife of

deceased is having mobile phone of her husband on 13th May, 2023, she did not file any report to the police till 16th May, 2023. It is thus his contention that this could be a case of concoction of evidence. As regards the chit is concerned, learned counsel for the applicant submits that there is no mentioned of said chit in the charge-sheet and hence it is not possible to accept that the alleged statement made in the chit has proximity in time with the act of commission of suicide by the deceased. To support his submissions, he placed reliance on following judgments :

- i) Sanju @ Sanjay Singh Sengar vs. State of M.P.
(2002) 5 SCC 371.
- ii) Yogesh s/o Prabhakar Marathe vs. The State of Maharashtra
& another
2021 ALL MR (Cri) 2476
- iii) Manohar Laxman Gavandha vs. The State of Maharashtra
2012 ALL MR (Cri) 68
- iv) Satish Ramsing Mungona & others vs. The State of
Maharashtra
2012 ALL MR (Cri) 69
- v) Devidas s/o Somaji Muneshwar vs. State of Maharashtra
2020 ALL MR (Cri) 2753
- vi) Tanmoy Mandal 2 Tanmay Mondal vs. The State of Jharkhand
MANU/JH/0529/2021.
- vii) Paramjeetsingh Chawala vs. State of M.P.
2007 Cri.L.J. 3343
- viii) Ajay Patodia vs. State of M.P.
2004 Cri.L.J. 197
- ix) Manoj Dasharath Khaire & others vs. State of Maharashtra
2021 ALL MR (Cri) 3539

4. Learned APP and learned counsel for the informant opposed the application by pointing out difference of allegations made against applicant and co-accused. It is submitted that allegation against the co-accused is that money was due to the deceased from them which they were not paying and allegation as against the present applicant is that he had lend money to the deceased and he was seeking recovery thereof. It is thus their case that there is no question of applying parity. It is argued that there are several allegations in the First Information Report including writing of chit by the deceased naming applicant. It is also submitted that CDR collected during the course of investigation indicates that as many as 45 calls were made by the applicant to the deceased between 11th May, 2023 to 13th May, 2023. As regards the date of incident is concerned, according to them, there were four calls made by applicant to the deceased. This according to them is sufficient act to indicate harassment caused by applicant to the deceased for the purpose of recovery of money, which led deceased to commit suicide.

5. First Information Report has been lodged on 16th May, 2023. The deceased left home on 12th May, 2023 whereas he committed suicide on 13th May, 2023 after 6.45 pm. As per the First

Information Report, the last message which was received by wife of the deceased was making allegations against the co-accused who have failed to repay money due to the deceased. It is stated therein that because of non-refund of money, he is taking such extreme step and that they are responsible for his death. Pertinently, there is no mention of the present applicant in the said message in order to indicate that he is also responsible for death of the deceased.

6. Though there is statement in the First Information Report that photograph of the chit was taken by deceased in his mobile phone. though the said knowledge was with the informant on 13th May, 2023 itself, no immediate report was lodged against the present applicant. As far as chit is concerned, it is claimed to have been recovered from the office of the deceased on 15th May, 2023. Perusal of copy of the said chit though mentions name of the present applicant and it is stated that he is asking for repayment of money, however, there is nothing on record to show as to when the said chit was written and hence WhatsApp message by deceased to his wife, at this stage would be considered as last communication made by him just before committing suicide. This Court, therefore, finds substance in the contention of learned counsel for the applicant that

this could be treated as dying declaration of the deceased which does not refer to the present applicant to be responsible for his death. Merely because applicant has lent money and he insisted for repayment of the same and phone calls are made by him to the deceased, it does not become a ground to accept the allegation that he instigated or abetted the act of commission of suicide. Prima facie, this Court finds substance in the contention of learned counsel for the applicant that if the applicant was intending to recover money from deceased, he would never want the deceased to die. Nothing is to be recovered from applicant. He is not likely to abscond. In such circumstances, this is a fit case for grant of anticipatory bail. Hence, application is allowed in terms of the interim order.

(R. M. JOSHI)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2843 OF 2023 IN
ANTICIPATORY BAIL APPLICATION NO. 924 OF 2023

Sarita Sunil Ingole (Deshmukh)

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. V. S. Kadam, Advocate for the applicant.

Mr. S. P. Sonpawale, APP for the State.

Mr. S. B. Bhapkar, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.

DATE : 6th SEPTEMBER, 2023.

PER COURT :

1. Learned counsel for the applicant states that he has instructions to appear on behalf of the applicant/informant.

2. Considering the nature of allegations, application is allowed.

(R. M. JOSHI)
Judge