

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1091 OF 2023

1. Nagesh @ Bunty s/o Mariba Waghmare
Age : 24 years, Occu. Agril,
R/o. Bhimnagar, Mudhkhd,
Tal Mudhkhd, Dist. Nanded.

2. Nagsen @ Balya s/o Sahebrao Choudante,
Age : 30 years, Occu. Agril,
R/o. Lumbini Nagar, Mudhkhd,
Tal Mudhkhd, Dist. Nanded.

...Applicants

Versus

1. The State of Maharashtra

2. The Investigating Officer,
Mudhkhd Police Station, Dist. Nanded.

... Respondents

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Shri. Dhananjay M. Shinde – Advocate for applicants
Shri. V. S. Badakh – APP for respondent/State

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CORAM : R. M. JOSHI, J.

DATE : 03RD OCTOBER, 2023

PER COURT :

1. The applicants apprehending arrest in connection with Crime No. 0114 of 2023 registered at Mudkhed Police Station, Dist. Nanded, for the offence punishable under Sections 306, 323, 504, 506 r/w 34 of the Indian Penal Code, approached this Court by filing present application under Section 438 of the Code of Criminal Procedure seeking anticipatory bail.

2. The first informant is the wife of the deceased Sachin Pakalwad. It is stated by her that prior to four months from the date of occurrence of incident, her husband had obtained hand loan of Rs. 1,05,000/- from the applicant no. 1 herein. The said loan was to be repaid with interest. It is alleged that applicant no. 1 used to threaten her husband for repayment of the same and was asking for exorbitant interest. It is further stated that, on 18.05.2023 at about 10:30 a.m. the incident in question has taken place wherein the deceased was assaulted by the applicants for repayment of the loan amount. It is also stated that, due to the said assault and the threaten by the applicants, her husband committed suicide by consuming poisonous substance.

3. Learned counsel for the applicants submits that though the alleged incident of assault took place on 18.05.2023 and the act of consumption of poison happened on the same day, no immediate report was lodged in this regard. It is submitted that the act of the deceased immediately informing his brother about the consumption of poison indicates he having no real intention to end his life. It is his further submission that if the applicants have lent money to the deceased, they would not have let him die.

4. Learned APP opposed the application stating that the statement of the brother of the deceased clearly indicates that the incident had occurred on 18.05.2023. It is submitted that the FIR was immediately lodged after the death of the deceased and since the deceased was brought to the hospital in unconscious state, his statement could not be recorded. He also submitted that there are statements of witnesses which indicate about the occurrence of the incident on 18.05.2023. He also contended that there are two crimes registered against the present applicants which shows that they are likely to pressurize the witnesses.

5. Perusal of the FIR indicates that, admittedly, the applicant no. 1 had advanced hand loan to the deceased and that he was insisting for repayment thereof. In order to appreciate as to whether there was any report lodged in respect of the incident in question the Station Diary Entry of Mudkhed Police Station of 18.05.2023 was called. Perusal thereof shows entry of 12:56 p.m. indicating the consumption of poison by deceased Sachin. There is, however, nothing to indicate about occurrence of any other incident more particularly incident of abuse and assault to the deceased at the hands of the applicants. Though there are

statements of witnesses indicating occurrence of said incident, however, their statements have been recorded on 22.05.2023. This court finds substance in the contention of the learned counsel for the applicants that the applicants since have lent money to the deceased, they would have preferred recovery of money rather than eyeing death of the deceased. This Court also finds substance in the contention of the learned counsel for the applicants that the deceased did not have real intention to commit suicide in view of the fact that after consuming poison he immediately called his brother but unfortunately he died during the course of treatment. Perusal of report though indicates that one crime each has been registered against the present applicants in the year 2018 and 2022, however, this cannot become a sole ground for rejection of the application. Nothing is to be recovered at the instance of the applicants. They are not likely to flee from justice. In view of these facts, application is allowed in terms of the interim order passed by this Court on 06th July, 2023.

[R. M. JOSHI]
JUDGE