

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1359 OF 2023

1. Archana w/o Nandkumar Swami
2. Yash s/o Nandkumar Swami Applicants
Versus

The State of Maharashtra Respondent

Mr. Anant Devakate, Advocate for the applicants.
Mr. G. O. Wattamwar, APP for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1365 OF 2023

1. Kiran Bhimrao Barkade
2. Pradeep Ajinath Padule Applicants
Versus

The State of Maharashtra & another Respondents

Mr. S. J. Salunke, Advocate for the applicants.
Mr. G. O. Wattamwar, APP for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1685 OF 2023

1. Shivdatta s/o Bhikaji Doke
2. Sachin s/o Subhash Yeote Applicants
Versus

The State of Maharashtra Respondents

Mr. S. P. Telgote, Advocate holding for Mr. A. S. Pawase, Advocate for the applicants.

Mr. G. O. Wattamwar, APP for the State.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1569 OF 2023

Suresh @ Suryakant s/o Chandrakant Kamble Applicant

Versus

The State of Maharashtra Respondent

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. P. L. Chavan,
Advocate for the applicant.

Mr. G. O. Wattamwar, APP for the State.

CORAM : R. M. JOSHI, J.
DATE : 18th OCTOBER, 2023.

ORDER

1. These applicants are apprehending arrest in connection with Crime No. 157/2023 registered with Bhoom Police Station, Dist. Osmanabad, for the offences punishable under Sections 306, 323, 504, 506 read with Section 34 of Indian Penal Code.

2. First informant is the mother of deceased Faiyyaz. Faiyyaz was working as a driver on the vehicle of Dr. Nandkumar Swami for four years. An offence came to be registered against Dr. swami for illegal termination of pregnancies. Since registration of

crime against him in the year 2022, Faiyyaz left the said job. It is alleged by the informant that Dr. Swami, his wife Archana and son Yash used to visit their house insisting Faiyyaz to return their money on the assurance that they will pay commission to him. They were also insisting him to work as a driver with them. She alleged that Faiyyaz used to be harassed by them and was also threatened to be involved in false case if he does not work with them. Faiyyaz was running a pan stall at Bhoom. On 20th June, 2023, he had been to his work. At about 3.45 pm, husband of informant received phone call from Faiyyaz informing that he is being confined in the bank of Suresh Kamble. When they went to the bank, it was found that Faiyyaz was confined in a room on the upper floor of the bank and four to five unknown persons were threatening him that he should return Dr. Swami's money immediately. Thereafter Suresh called Faiyyaz to his cabin. Suresh also told Faiyyaz to return amount of Rs.35,00,000/- to Dr. Swami and that he was engaged for recovery of the said amount. When Faiyyaz stated that he does not have any money belonging to Dr. Swami, applicants Shivdatta, Sachin and two to three unknown persons threatened him by stating that they know as to how to recover the money. Faiyyaz was assaulted by them. Thereafter they started proceeding towards police station. They were

followed by four to five persons in the car and at the gate of police station, they were threatened not to lodge complaint. Being scared by the said threats, no complaint was lodged. On the next day, early in the morning, it was found that Faiyyaz committed suicide by hanging himself. Before death, Faiyyaz recorded his video indicating the reason for his suicide.

3. It is the contention of learned Senior Counsel for applicant in Anticipatory Bail Application No. 1569/2023 that there cannot be any intention of the person who wishes to recovery money from someone that the said person should die. By referring to the First Information Report, it is submitted that the allegations against the applicant herein are general in nature and even for the sake of argument if the same are accepted, it is not possible to hold that the applicant herein even intended to drive the deceased to commit suicide. He further argued that the First Information Report shows that the deceased had decided to go to the police station to lodge report which indicates that he was determined to do so and hence this cannot be said to be a case of commission of suicide on account of the incident allegedly occurred on the previous day. It is also argued that the offence under Section 306 of Indian Penal Code

cannot get attracted in respect of the incident occurred when any one ordinarily treated so would not commit suicide. As far as alleged criminal history of the applicant is concerned, it is contended that though two offences were registered however, in one of the offences, report under Section 164 of Code of Criminal Procedure came to be filed and in another offence no charge-sheet is filed against him. To support his contentions, he placed reliance on following judgments :-

- i) Arnab Manoranjan Goswami vs. State of Maharashtra & others
2021 CRI.L.J. 517
- ii) Hafizur Rahman Sheikh vs. State of Maharashtra & others
2021 DGLS (Bom.) 948
- iii) Suresh Trimbakrao Khursale & others vs. The State of Maharashtra & another
Criminal Revision Application No. 48/2020
Decided on 17th August, 2021.

4. Learned counsel for applicants in Anticipatory Bail Application No. 1359/2023 submits that applicants are wife and son of Dr. Swami. It is his contention that since long i.e. since 2005, they are staying separately and hence they have no nexus with the crime in question. To support said submission, he placed reliance on the order passed granting maintenance to applicants by the competent Court. It is his submission that in order to pressurise them, their names are included in the First Information Report.

5. Learned counsel for applicants in Anticipatory Bail Application No. 1685/2023 contends that even if it is accepted that these applicants were present in the bank, it cannot be held that they participated in the assault. It is also submitted that even if the incident of assault is accepted for the sake of argument, this does not indicate their intention to drive the deceased to commit suicide. It is further submitted that the applicants are local political leaders and that in order to malign their reputation, they have been falsely implicated in this crime. It is further argued that being customers of the bank, it is always open for anyone to visit the bank and on that count, he cannot be implicated falsely in any crime.

6. Learned counsel for applicants in Anticipatory Bail Application No. 1365/2023 argued that names of these applicants do not appear in First Information Report and that they have no nexus with crime in question.

7. Learned APP opposed the applications by contending that this is a serious case wherein the person who is accused of involved in illegal termination of pregnancy pressurised the deceased through his family members and persons engaged by him for recovery of

money. It is submitted that the First Information Report indicates that the incident in question which has occurred before the date of commission of suicide is not the solitary incident as even previously deceased was pressurised by the wife and son of Dr. Swami. Reliance is placed on the transcript of video which shows that since last six months deceased was tortured and physically assaulted on account of which he felt that that there is no other option for him but to commit suicide.

8. Perusal of the First Information Report as well as transcript of video recorded by deceased before his death clearly indicates that deceased was pressurised and tortured for more than six months before he committed suicide. The said electronic suicide note of the deceased speaks volume about the harassment caused to him for the alleged recovery of money from him. The submission of learned Senior Counsel that the person who wants to recover money would not want the debtor to die and hence no offence under Section 306 of Indian Penal Code can be said to have been committed, cannot be accepted as a universal rule and if it is done so, it will give licence to the lenders to even cause harassment or torture to the debtors for recovery of money. No doubt, demand for return of money or even

insistence for the same may be permissible however, by no stretch of imagination, it can be said that a person can be allowed to be pressurised and even physically assaulted for that purpose. In the instant case, the deceased was harassed for more than six months and the last incident of physical assault on him proves to be fatal which led him to think that there is no other option for him but to commit suicide. Prima facie there is no material on record to indicate that deceased was hypersensitive. Moreover, there is nothing on record to indicate any other reason for him to commit suicide.

9. As far as prima facie involvement of applicants in Anticipatory Bail Application No. 1365/2023 in the crime in question is concerned, though their names are not appearing in the First Information Report, however, there is evidence in the form of CCTV Footage which indicates that these applicants were the persons who stopped the deceased, informant and her husband from going to the police station. Thus, there is corroborative evidence to the allegations against these applicants that they threatened the informant and others not to lodge any complaint in respect of the incident to the police.

10. As far as applicants Archana and Yash are concerned, though in a proceeding under Section 125 of Code of Criminal Procedure, the competent Court granted ad-interim maintenance in their favour however, material collected during the course of investigation clearly indicates that at the relevant time the wife and son of Dr. Swami were staying with him. Merely because applicants were successful in getting ad-interim relief, on the basis of making statement that they had no concern with Dr. Swami, but it is revealed from the investigation carried out till date that they are connected with him and also residing with him. In view of specific allegation against them, their involvement is clearly seen in this crime.

11. Applicants Shivdatta and Sachin claim themselves to be political leaders however, their presence in the bank at the relevant time is not in dispute. There is nothing on record to indicate that informant had any reason of whatsoever nature in order to falsely implicate them in this crime. They have allegedly played active role in adopting pressurising tactics and assaulting the deceased and as such there is material to indicate their complicity in this crime.

12. Applicant Suresh in Anticipatory Bail Application No. 1569/2023 is the person who is the Chairman of the bank wherein the deceased was called on the fateful day. There are specific statements of witnesses which indicate that initially deceased was confined in a room and thereafter he was called in the cabin of Suresh. This applicant threatened the deceased to repay amount of Rs. 35,00,000/- to Dr. Swami and further told the deceased that he has been engaged for doing the said recovery.

13. As far as proximity of the said incident and death is concerned, immediately on the next day of the confinement, torture, harassment and physical assault, the deceased committed suicide. There is close proximity in time of the occurrence of the said incident and death of the deceased. On the face of record no other reason is appearing for which the deceased could have committed suicide. This Court, finds absolutely no oblique motive of the informant in lodging First Information Report against the present applicants.

14. Considering the serious nature of offence, it is not a fit case for grant of pre-arrest bail. Hence, all the applications are rejected.

15. Learned counsel for the applicants in Anticipatory Bail Application No. 1359/2023 submits that the liberty of the applicants is protected by the interim order passed by this Court. In order to enable the applicants to approach the Hon'ble Apex Court, he seeks extension of the said order for the period of four weeks.

16. Learned APP opposed the said request on the ground that prima facie involvement of the applicants is found in this crime.

17. Only for the reason that their liberty was protected by interim order, the said order to remain in force for two weeks from today.

(R. M. JOSHI)
Judge

dyb