

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1007 OF 2022

Subhash Rama Fulmali

.. Appellant

Versus

The State of Maharashtra and another

.. Respondents

Mr. Sohail Subhedar, Advocate for the Appellant.

Mr. P. N. Kutti, APP for Respondent No. 1.

Mr. V. S. Salve, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 23rd JANUARY, 2023.

P. C. :-

. This is an appeal seeking bail in the event of arrest of appellant. The informant/respondent No. 2 lodged the FIR with Police Station, Jamkhed, District Ahmednagar bearing No. 0198 on 05.05.2022 for the offences punishable under Sections 306, 201 r/w Section 34 of the Indian Penal Code (for short "I.P.C."). Subsequently, an offence under Sections 3 (1) (r), 3 (1) (s) and 3 (2) (v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (for short "Atrocities Act") came to be added. The allegation is that, sister of the informant had relations with one Arun Fulmali who happens to be brother of the present appellant. Because of those extra marital relations there was a dispute between Arun and the appellant. On that count, the present

appellant and his other brother had abused and assaulted deceased sister of the informant. On 04.05.2022 the deceased had been to the house of Arun. At 12.30 a.m. on 05.05.2022 the informant was told that his deceased sister was lying unconscious in front of the house of Arun. On receiving this information he immediately rushed to the spot. He found Arun, another brother Santosh and this appellant at the spot. It was told that the deceased committed suicide because of the abuses given by the accused persons. After she committed suicide the accused persons took her body and kept it on the road. Body was taken immediately to the hospital where she was declared dead.

2. It is submitted that, there is no act of instigation alleged in the entire information. No ingredients attracting any of the offences under the Atrocities Act are made out. To prove Section 306 of the I.P.C., there has to be some continuous harassment or as to an abettment as defined under Section 107 of the I.P.C. It is further submitted that, the present appellant is residing at a different place than Arun Fulmali and he had no reason to commit such an offence. A prayer is therefore made for allowing the appeal.

3. Learned advocate for the appellant relies upon the judgment of the Hon'ble Apex Court in a case of **Prahaladdas Vs. State of M.P and ors.** reported in **MANU/SC/1229/1995**. He also relies upon order

passed by this Court in a case of Laxmi w/o Bapu Kadam Vs. State of Maharashtra in Anticipatory Bail Application No. 349/2022 dated 23.08.2022. Further, he relies upon the judgment passed by this Court in a case of Rajendra Daulatrao Wankhed and anr. Vs. The State of Maharashtra and ors. in Criminal Application No. 1096/2021 dated 09.12.2022 to submit that it is necessary to make out an offence under Section 306 of the I.P.C. that it would be shown by the prosecution the harassment at the hands of the accused person.

4. Learned A.P.P. opposes the appeal stating that, since the day of offence, the appellant and other accused persons are absconded and they are not co-operating. He submits that, custodial interrogation is necessary since only the accused persons who know as to how and where the deceased died and why she committed suicide.

5. Learned advocate for respondent No. 2 also opposes the appeal by relying upon the orders passed by this Court at Principal Seat at Bombay in Anticipatory Bail Application Nos. 102/2021 and 112/2022.

6. On considering the facts, it is clear that, at the time of alleged incident of suicide, it is only the accused persons who were allegedly present since it was time in the midnight. It also needs to be

interrogated as to who brought the body of the deceased in front of the house of Arun.

7. So far as the judgments relied upon by the learned advocate for the appellant/accused, the first judgment is the judgment delivered after the trial was over. The order of summary of the appellant was under challenge and it is held that merely uttering the words that go and die is not sufficient to attract the ingredients of Section 306 of the I.P.C. In Anticipatory Bail Application No. 349/2022, the facts were that because of the demand of money and for that merely because sending SMS on Whatsapp with a video clip that wife is having extra marital relations with someone else is not sufficient to prove offence under Section 306 of the I.P.C. and in view of the matter, the application was allowed. So far as Criminal Application No. 1096/2021 is concerned, this Court has quashed the proceedings by observing that the prosecution has not demonstrated and established that there was continuous harassment which made the deceased to commit suicide and the proceeding is quashed. The judgment in a case of Prahaladdas Vs. State of M.P. and ors. (supra) and judgment in Criminal Application No. 1096/2021 are not in respect of grant of anticipatory bail. So far as Anticipatory Bail Application No. 349/2022 is concerned, it is seen that the facts were different and in those facts

the bail was granted. So far as orders in Anticipatory Bail Application Nos. 102/2021 and 112/2022 are concerned, it is seen that the bail applications were rejected by observing that, prima facie, the deceased was subjected to constant humiliation and ill treatment by uttering offensive words and the bail applications were rejected.

8. Though, prima facie, no offence is made out under the provisions of the Atrocities Act, still looking to the fact that even for investigation of offence under Section 306 of the I.P.C. and for interrogation the custody is required.

9. After considering all these facts, this Court finds that, no case is made out to allow the appeal.

10. The appeal stands dismissed and disposed off.

(KISHORE C. SANT, J.)

PS.B.