

Vikrant Krishna Masane and Another ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr. Shanta Shinde, informant present in Court.

DATE : SEPTEMBER 20, 2023

1. This application is preferred seeking pre-arrest bail in connection with C.R. No. 18 of 2023 registered with Badlapur (w) police station for an offence punishable under section 306 read with 34 of Indian penal Code, 1860.

2. The applicants have been arraigned for having abetted the commission of suicide by "P", the daughter of the first informant. The indictment against the applicant runs as under:-

(a) The applicant No. 1 Vikrant, was in a relationship with “P” since 2016. The applicant No. 2 is the mother of applicant No. 1.

Applicants No. 3 and 4 are the brother and sister respectively of applicant No. 1. Applicant No. 5 is a close associate of applicant No. 1. The families gave consent to their marriage after applicant No. 1 got an employment. In the year 2020 applicant No. 1 got an employment in City Survey Office, Ulhasnagar on compassionate ground. Thereafter, the demands of applicant No. 1 and his family members regarding articles to be presented in marriage and expenditure to be incurred for marriage, allegedly increased.

(b) The first informant alleged that on 12th September, 2022 at about 11.30 am, the applicant No. 3, the elder brother of applicant No. 1, made a call to the first informant and informed her that it was decided amongst the applicants that the proposed marriage between the applicant No. 1 and P be called off, as they belonged to different castes and the applicant No. 1 had asked him to inform the first informant. The deceased heard conversation as the phone was on speaker mode. The deceased was in a disturbed state of mind.

(c) On the next day at about 7 pm the deceased started vomiting. She was taken to Alka Clinic. Doctor informed the first informant that the deceased had consumed Ratol/rat killer. She was shifted to Vaishnavi Hospital, Badlapur. Upon being inquired, the deceased informed the first informant that fed up with the

behaviour of applicant No. 1 and due to call made by applicant No. 3 she had consumed Ratol on 12th September, 2022 at 11.30 am. As her condition improved, she was discharged. However, further complications developed and the deceased expired on 19th September, 2022. The first informant lodged a complaint with the police on 16th December, 2022. Eventually, the first information report came to be registered.

3. Apprehending arrest, the applicants approached the Court of Session. By an order dated 1st December, 2022 the learned Additional Session Judge, Kalyan rejected the application. By an order dated 22nd February, 2023 this Court was persuaded to grant interim protection.

4. Mr. Khandeparkar, learned Senior Advocate for the applicants submitted that the allegations in the first information report do not make out a prima facie case for the offence punishable under section 306 of the Penal Code. None of the acts or conduct attributed to the applicants would constitute abetment within the meaning of section 107 of the Penal Code. It was urged that from the own showing of the prosecution, the deceased had recovered on 13th September, 2022 itself and was even discharged from the

hospital. In the circumstances, to facilitate further investigation custodial interrogation of the applicants is not at all warranted. Therefore, the applicants deserve pre-arrest bail.

5. In opposition to this Mr. Pethe, learned APP, would urge that the material on record would indicate that abrupt breaking of the scheduled marriage after a long standing relationship between the applicant No. 1 and the deceased was the direct and proximate cause for the suicide by the deceased. Taking the Court through the medical certificate and the CDR which indicated that the applicant and the deceased were in touch on 12th, 13th and 14th September, 2022, Mr. Pethe would submit that custodial interrogation of the applicant is warranted.

6. Mr. Kate, learned counsel for the first informant, also resisted the prayer for pre-arrest bail. It was submitted that the deceased could not bear abrupt disruption of relationship on the ground that the deceased and the applicant No. 1 belonged to different caste, after she was made to carry on the relationship for almost five years. Therefore, a strong prima facie case for the offence punishable under section 306 is made out.

7. From the tenor of the allegations in the first information report, it becomes evident that the applicant No. 1 and the deceased were in a relationship for five years prior to the occurrence. Though an endeavour was made to urge on behalf of the prosecution that the applicant called off the marriage after the applicant No. 1 got employment yet the time lag of more than two years in the applicant No. 1 securing employment and the occurrence prima facie renders the prosecution version debatable. First information report further indicates that the applicant No. 3 stated that the difference in the caste of the applicant No. 1 and the deceased was the reason for calling off the marriage. In the later part, the first informant alleged that on 15th September, 2022 while deceased was admitted in hospital, the applicant No. 1 told the cousin of the deceased that his mother, the applicant No. 2, had told him not to marry the deceased as their horoscopes did not match and, therefore, there were quarrels between applicant No.1 and the deceased.

8. Even if the allegations in the first information report are taken at par and the Court proceeds on the premise that the applicant No. 1 had unilaterally called off the marriage, the question as to whether the said act would fall within the dragnet of

section 306 of the Penal Code warrants consideration. The legal position is well nigh settled.

9. In the case of **Madan Mohan Singh vs. State of Gujrat and Anr.**¹ the Supreme Court enunciated the position as under:-

12] In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.

10. **M. Mohan vs. State (Dy. Superintendent of Police)**² the Supreme Court expounded the import of “abetment” in the following words:-

44. This court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* 2009 (16) SCC 605, had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word “instigation” and “goading”. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidability pattern is different from the others. Each person has his own idea of self- esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to

1 (2010) 8 SCC 628.

2 (2011) 3 Supreme Court Cases 626

instigate or aid in committing suicide, conviction cannot be sustained.

46. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

(emphasis supplied)

11. In the case of **Ude Singh and Others vs. State of Haryana**³ the Supreme Court after adverting to the previous pronouncement enunciated as under:-

15] Thus, “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when: (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16] In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

(emphasis supplied)

3 (2019) 17 Supreme Court Cases 301.

12. In the case of **M. Arjunan vs. State**⁴ the Supreme Court postulate the ingredients of offence 306 of the Penal Code as under:-

7] The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C.

13. Applying the aforesaid principles to the facts of the case, prima facie it does not appear that the applicants, especially the applicant No. 1, by calling off the marriage intended that the said act would instigate the deceased to commit suicide. Whether the intention of the applicants was to bring about the result of suicide by the deceased on account of refusal to solemnize the marriage of applicant No. 1 with the deceased would warrant adjudication. Prima facie, it appears that while the applicant No. 1 and the deceased were in a deep relationship, the family members of the applicant No. 1 prevailed upon the applicant No. 1 to call off the marriage. However, whether the said act would fall within the mischief of the instigation or intentional aid contemplated by the first and second segment of section 107 of the Penal Code is the matter for trial. Thus, I am impelled to hold that a prima facie case

4 (2019) 3 Supreme Court Cases 315.

for exercise of discretion is made out.

14. In any event, having regard to the nature of the accusation, custodial interrogation of the applicants does not seem to be warranted for an effective and complete investigation. The applicant No. 1 is gainfully employed. Rest of the applicants also have roots in society. Possibility of fleeing away from justice appears to be remote. Apprehension on the part of the prosecution as regards tampering with evidence can be taken care of by imposing conditions.

Hence, the following order.

ORDER

1] The order of interim bail dated 31st March, 2023 is made absolute subject to the following terms and conditions:-

- (i) The applicants shall cooperate with the investigation and attend Badlapur (w) police station as and when directed.
- (ii) The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or the persons acquainted with the facts of the case.

(iii) The applicants shall regularly attend the proceedings before the jurisdictional Court.

Application disposed.

(N. J. JAMADAR, J.)