

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1756 OF 2023

Nirupam Jaywant Joshi	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr.Ashok Mundargi, Senior Advocate a/w.
Mr.Chandrasingh Shekhawat & Parinam Law
Associates, for the Applicant.

Mr. Bhushan Raut, for the original complainant.

Mrs. Veera Shinde, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 28, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.318 of 2023 registered with Chaturshrungi police station, for offence punishable under Section 306 of the Indian Penal Code, 1860 (for short 'IPC'), the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.).

2. According to the prosecution, the informant's son was student of Shankarrao Chavan Law College, Pune and residing at hostel in Gokhale Nagar, Pune. On 9 May 2023 at around 7:00 pm the informant received call that his son has committed suicide by hanging himself in hostel room. The informant reached at Pune hospital and after getting the copy of suicide note, he lodged

report with the respondent police station. The suicide note named the applicant alleging role of deceased as facilitator of transfer the amount. As per reply filed by the prosecution to the pre-arrest bail application, the applicant and deceased were studying in the same law college in third year. The applicant had borrowed amount from third person. The deceased acted as mediator. Despite repeated request the applicant refused to pay the amount. Therefore, deceased on 9 May 2023 committed suicide.

3. On perusal of suicide note, it appears that the deceased had named the applicant by stating deceased acted as mediator for the money received by the applicant.

4. Learned Advocate for the victim submitted that the acts of the applicant of not paying the amount resulted in commission of suicide by the deceased. According to the Advocate that father of the deceased stated that deceased told him that the applicant was not paying the amount and stated to deceased he can do whatever he want. The deceased had gone to the applicant's home day prior to the incident and he was under mental stress.

5. Learned APP, submitted that the statement of witnesses indicates that it was failure on the part of the applicant to repay the amount, the deceased committed suicide and therefore, custodial interrogation of the applicant is necessary.

6. I have perused the material on record and case diary, prima facie, it appears that third person had lent the amount in the context of facts stated above, it is necessary to consider prima facie applicability of Section 306 of IPC. It is well settled, in view of

recent judgment of Apex Court in the case of **Mahesh Gorakshanath Kadam and ors vs the State of Maharashtra** reported in (2022) 2 SCC 129, the essence of abetment under Section 107 lies in instigating a person to do a thing or the intentional doing of that thing by an act or illegal omission. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. It is required that the accused by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide. Therefore, needs to be postulate action proximate to the time of occurrence on the part of accused which laid or compelled the person to commit suicide.

7. In the facts of the present case, according to the prosecution, the applicant borrowed money from third person. Prima facie was no privity contract between applicant and deceased. Prima facie, the applicant was not liable to pay any amount to the deceased.

8. As regards, recital in the suicide note, the Apex Court in the case of **Madan Mohan Singh vs State of Gujarat & Anr.**, reported in (2010) 8 SCC 628, was considering a case whether the accused was named in the suicide note, it was stated that the accused was responsible for the suicide. The Apex Court observed that 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 out the suicide of the concerned person as a result of that abetment is required. In the facts of the present case, investigation is at initial stage. However, the case of the prosecution is commission of suicide by deceased for non-payment of amount borrowed by the applicant to third parties. As of today there is no material on record to indicate that the applicant instigated the deceased to commit suicide. In the absence of prima facie case, custodial interrogation of the applicant is not necessary. Hence, following order:

- a) In the event of arrest in connection with C.R. No. 318 of 2023 registered with Chaturshrungi police station, for offence punishable under Section 306 of IPC, the applicant be released on interim bail on furnishing P.R. bond of Rs.50,000/-, along with one or two sureties in the like amount.
- b) The applicant shall remain present before the concerned police station on 30th June, 2023, 3rd and 5th July 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.
- c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.
- d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

9. The anticipatory bail application stands disposed of.

(AMIT BORKAR, J.)