

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (ABA) NO. 54 OF 2023

Paresh s/o Prabhakar Rao Dakhore vs. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G. D. Dani, Advocate for applicant.
Mr. V. A. Thakre, APP for respondent State.

CORAM : BHARATI DANGRE J.

DATE : 30/01/2023

One Sushil Shivshambhu Nandekar resident of Beltarodi consumed a poisonous substance on 12/11/2022 at his residence and this was noticed by his mother when she knocked the door of his room for offering tea and there was no response from inside. From the window she could see her son vomiting and therefore with the assistance of the neighbors, the door was broken and her son was found in a very precarious condition. He was taken to the Medical Hospital and on 13/11/2022, he succumbed. Pursuant to this Murg No.63/2022 under Section 174 of the Cr.P.C. came to be registered.

2. Surprisingly, on visiting the room, when the Panchnama was carried out a suicide note was recovered, which is alleged to be under the signature of the deceased and it is on the basis of this suicide note, after a period of more than a month and to be precise, on 22/12/2022, an FIR came to be registered invoking Sections 306 read with 34 of the IPC against three accused persons, the applicant being arraigned as accused No.3.

3. When the suicide note, which has been forwarded for analysis to the handwriting expert is perused, it is revealed that deceased has made reference to the accused No.1 and 2 as husband and wife and the narration in the note is to the effect that accused No.1 Tina was pressurizing him to solemnize marriage with him after she had obtained divorce from her husband i.e. accused No.2. There is also an accusation against the present applicant that Tina was close to him and she was accompanying him at places and at time she was residing with the applicant.

4. Perusal of the FIR also contain a similar allegation which is based on suicide note. It is on the basis of this suicide note the applicant is arraigned as accused for abetting the suicide of the deceased.

5. When the material compiled in the case diary is perused, the same is short of making out an offence under Section 306. Abetment definitely involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. In order to sustain a conviction under Section 306 of the IPC, it must be necessarily established by the prosecution that there is a clear *mens rea* to commit the offence, as it necessarily contemplate an active/direct act which has led the deceased to commit suicide with no option being kept open i.e. there has to be an intention to push the deceased into commission of the said act.

6. When the suicide note as well as statements recorded during the course of investigation and particularly the statement of Sau.Manisha Ayre is perused, the necessary ingredients of abetment to commit suicide under Section 306 of the IPC, is conspicuously absent, which necessarily involve abetment, and the intention of the accused to aid or instigate the deceased to commit suicide. Merely because the accusation levelled in the suicide note is to the effect that the deceased was being pressurized by accused No.1 to perform the marriage and the applicant who is arraigned as accused No.3, was also insisting that

the marriage shall be performed is not a sufficient justification, in my *prima facie* view to invoke Section 306 against him. In this circumstances, his custodial interrogation is not warranted at all and the applicant deserve protection from the arrest. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) In the event of arrest in connection with C.R.No.0530/2022 registered with Police Station Beltarodi, District Nagpur applicant – **Paresh S/o Prabhakar Rao Dakhore**, shall be released on bail on furnishing P. R. Bond to the extent of Rs.25,000/- with one or two sureties in the like amount.
- (c) The applicant shall report to the concerned Police Station on Thursday and Friday between 3.00p.m. to 5.00p.m. for a period of two weeks and thereafter, as and when called for.
- (d) 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/her from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

10. The observations made above are *prima facie* in nature and are restricted for the purpose of determination of the application and trial Court shall not be influenced by the aforesaid observations when the applicant is tried as an accused.

11. Application is disposed of.

[BHARATI DANGRE J.]