

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.401 OF 2023

Shakir Khan s/o Subhedar Khan Vs. State of Maharashtra, through PSO, PS
Warora, Dist. Chandrapur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.B. Naidu, Advocate for applicant.
Shri S.M. Ghodeswar, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : JULY 13, 2023.

The present application is filed for the grant of anticipatory bail in the event of arrest in connection with Crime No.364/2023 registered at Police Station, Warora, District Chandrapur for the offence punishable under Section 306 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of police as one Rambhau Gulab Dhage has lodged a report against him on an allegation that his elder son deceased Sandip Dhage was doing the plumbing work. On 09.05.2023 at about 8.00 am, he received a phone call from his daughter-in-law, who is the wife of the deceased Sandip Dhage, and disclosed that the deceased Sandip Dhage has consumed a poisonous substance and is serious. His condition was serious and he was lying on the agricultural land. He immediately visited his agricultural land and observed that deceased Sandip Dhage has consumed poison

and succumbed to death. As per the allegations, the deceased Sandip Dhage has committed suicide due to torture at the hands of the present applicant. It is further alleged that some amount was lying with the present applicant and deceased was demanding the same. The present applicant denied to pay the amount and therefore the deceased has committed suicide. On the basis of the report, the police have registered the crime against the present applicant.

3. As per the contention of the present applicant, the applicant is working as a Factory Manager in Gima Text Company belongs to one Mohota family. There was a partition between Mohota group and in 2005 the applicant joined Gima Text Company as a Factory Manager and looking after the labour problems. In due course, the Managing Director of Gima Text Shri Prashant Mohota promoted another company in the name of Textile Park at Hinganghat and one Shri Prashant Retar is looking after the work in the said Textile Park. They wanted to install drip/sprinkler irrigation system garden of Textile Park for which the quotations were called. The deceased who is resident of Warora submitted his quotation for the installation of drip irrigation system at the cost of ₹2,56,500/-. After negotiations, his quotation was approved and he was informed by the management of Textile Park to start work vide order dated 30.04.2022. The deceased was requested before starting the work that 75% of the quotation amount should be paid by the company in advance to enable

him to purchase material. Considering his request, an amount of ₹1,92,375/- was transferred on 05.05.2022 from the account of Textile Park in the account of deceased Sandip Dhage by way of an online transaction. It is further contended by the applicant that after receipt of the amount it was expected that said Sandip Dhage would start the work immediately but he did not initiate the work and was also not responding. Therefore, the Director of Textile Park asked the present applicant to look into the matter. Thereafter, the present applicant followed him and requested him to start the work of installation, wherein the deceased denied starting the work and informed him that he would come and meet the applicant. On 10.04.2023, again Sandip Dhage was requested to start the work of installation but he flatly refused the same and asked his amount back. Thereafter, the present applicant asked him and requested to complete the work but the deceased completely denied the said work. On the contrary, sent the message that he would commit suicide and the present applicant would be responsible for the same. Accordingly, the deceased has committed suicide and the present applicant is implicated in the alleged crime. As per the contention of the present applicant, he is not at all concerned with the suicide of the deceased. He is implicated maliciously and falsely. His custodial interrogation is not required. He has already cooperated with the investigating agency and hence he be protected by granting anticipatory bail.

4. Said application is strongly opposed by the State on the ground that the deceased has written a suicidal note, wherein he has specifically mentioned that due to the torture of the present applicant, he is committing suicide. It is further contention of the State that during the investigation the spot panchanama is drawn and one bottle of insecticide is seized from the spot. The suicide note is also seized, which reflects that the present applicant is harassing him for the last ten years and therefore he is committing suicide. Said suicidal note has been forwarded to the handwriting expert. *Prima facie* case is made out against the present applicant and hence application deserves to be rejected.

5. Heard learned counsel for the applicant Shri Naidu. He reiterated the contention and submitted that it was the deceased who was not concluded the work though tender was given to him to compete and the amount was also transferred to him. He has left incomplete work therefore the applicant was only following the same but the present applicant is implicated maliciously and falsely. The deceased has sent him also a WhatsApp message. Even the allegations are taken as it is the custodial interrogation of the present applicant is not required and he be protected by granting anticipatory bail.

6. Learned APP submitted that considering the suicidal note there is a specific allegation against the present applicant that due to the present applicant, the deceased is

committing suicide. The custodial interrogation of the present applicant is required to ascertain the fact regarding the transactions between them. Therefore, the bail application deserves to be rejected.

7. Having heard both sides and on perusal of the investigation papers, it reveals that there was a transaction between the present applicant as incharge of the said Hinganghat Integrated Textile Park Private Limited. From the documents on record, it appears that the tender was given to the deceased for the installation of drip irrigation system in the garden of the said company. Some amount of ₹1,92,375/- was also transferred to the account of the deceased. During the investigation, the investigating officer collected the communication, which is exchanged on WhatsApp, which shows that the deceased has communicated to the present applicant that due to the harassment, he would commit suicide. One compliant application is also filed by the present applicant at Hinganghat Police Station dated 12.04.2023 informing that the deceased has accepted the work but has not completed the same and he is sending a message to the present applicant that he will commit suicide. The deceased has also written a suicidal note, which shows that the present applicant is harassing him for the last ten years. He fed-up with the said torture and therefore he is committing suicide. The suicidal note further shows that though he has demanded the money from the present applicant, which he

has invested but the present applicant has not repaid the amount. The present applicant has also not cleared his bill and therefore he is suffering due to financial losses and committed suicide. Thus, from the recitals of the suicidal note, it is apparent that he was completely held responsible for his suicide to the present applicant. Thus, *prima facie*, material against the present applicant to connect him with the alleged offence. During the investigation, the investigating officer recorded the statements of the witnesses. The documents on record show that the tender was given to the deceased. Nothing is on record to show whether the deceased has completed the work or not. No such expert report is filed on record to show that the deceased has left the incomplete work. At this stage, there is *prima facie* material in the nature of the suicide note to connect the present applicant with the alleged offence. Though learned counsel ***Shri Naidu placed reliance on Devidas S/o Somaji Muneshwar Vs. State of Maharashtra and another*** reported in ***2020 ALL MNR (Cri) 2753***, wherein this Court has considered the application for pre-arrest bail and observed that the deceased in his suicide note stated that he had taken a loan from the accused persons and though same was refunded the accused was demanding amount by making phone call and extending threats. The investigation paper is silent as to when the loan was taken and when it was refunded. The investigating officer could have done this investigation independently and released the applicant on anticipatory bail.

8. Here the facts are identical to the facts in the cited case law. Here in the present case, it is apparent that the deceased has obtained the work and some amount was transferred to the deceased's account. There is a communication to the police by the present applicant that the deceased has not completed the work however there is no document on record to show that any notice was issued to the deceased as he has not completed the work. The suicidal note shows that the deceased was being harassed by the present applicant for the last ten years. The deceased was demanding the amount which was also not paid and therefore deceased was in financial difficulty and therefore he has committed suicide. Considering the allegation in the suicidal note, admittedly, the custodial interrogation of the present applicant is required to ascertain the fact. As a *prima facie* case is made out against the present applicant, the bail application for anticipatory bail deserves to be rejected. Accordingly, the criminal application is rejected.

JUDGE

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