



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 774 OF 2024

Abdulla Khan @ Babajani Latif Khan Durani .. Appellant

Versus

The State of Maharashtra & another .. Respondents

Mr. R. N. Dhorde, Senior Counsel instructed by Mr. N. R. Pawde,
Advocate for the Appellant.
Mr. B. B. Bhise, APP for the State.
Mr. A. L. Kanade, Advocate for the informant.

CORAM : R. M. JOSHI, J.

DATE : 7th OCTOBER, 2024.

PER COURT :

1. Appellant apprehends arrest in connection with Crime No. 0447/2024 registered with Pathri Police Station, Dist. Parbhani for the offences punishable under Section 108 read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 and under Section 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. First informant is the son of deceased Balkrishna. He has stated about his father regularly going to the agricultural field and even staying there over night. On 12.08.2024, at about 4.30 pm,

Balkrishna went to the field. He did not return home in the night and hence on 13.08.2024, at about 6.30 to 7.00 am he called him but the phone was not received by his father. He therefore went to the field and found his father sitting in a chair. He was however, found dead. While conducting inquest panchanama, a suicide note was found wherein name of present appellant and complaints made by deceased to the Chief Minister and Deputy Chief Minister dated 07.07.2024 and 05.08.2024 were referred. It is further stated in the said suicide note that he is harassed by his relatives and adjoining land owner and being fed up with the political activists he has committed suicide. It is also stated in the First Information Report that appellant has not paid money to the deceased in respect of the plot near Majalgaon road canal. It is also contended that the adjoining land owner as well as relatives of the deceased started causing harassment to him and therefore, deceased used to be in mental tension. It is thus alleged that all these persons instigated the deceased to commit suicide.

3. Learned Senior Counsel appearing on behalf of the appellant submits that owing to the political rivalry, present First Information Report came to be lodged. It is his contention that

informant is an activist of political party and since appellant joined recently its political rival party, he is being sought to be framed in the crime. He drew attention of the Court to the suicide note wherein, according to him, though name of the appellant is mentioned, it cannot be said that he has abetted/instigated the deceased for commission of suicide. It is submitted that overall reading of the suicide note indicates that being frustrated by various reasons including alleged harassment by neighbouring agriculturist, conduct of relatives and political activist, deceased could have taken extreme step of suicide. By referring to the documents on record, it is contended that the issue canvassed in respect of the plot which was allegedly allotted to the uncle of the deceased can never become a ground for the deceased to commit suicide, for the reason that in the 60's some society was formed and the plots were allotted. It is submitted that in the year 2000, the said uncle of the deceased, who was ex-MP died and thereafter for 24 years said issue is raised for first time. It is submitted that in any case, the said issue cannot become a reason for the deceased to commit suicide. According to him, other allegations from the First Information Report are after thought and concocted and hence cannot become basis for rejection of appeal. It is finally argued that considering nature of allegations,

offence under Section 109 of Bharatiya Nyaya Sanhita is not made out nor this is a case requiring custodial interrogation.

4. Learned APP opposed the appeal by drawing attention of the Court to the contents of the First Information Report which, according to him, are sufficient to indicate that the deceased left behind him a suicide note showing name of the present appellant. It is his further submission that owing to the previous criminal history against the present appellant, he is not entitled for anticipatory bail.

5. Learned counsel for informant at the outset, opposed the tenability of appeal on the ground that there is bar created by Section 18 of the Atrocities Act for entertaining anticipatory bail application. He placed reliance on judgment of Hon'ble Apex Court in case of Vilas Pandurang Pawar and another vs. State of Maharashtra and another, **2012(8) Supreme Court Cases 795** and referred to paragraph No. 10 of the said judgment to support the said submission. He drew attention of the Court to the affidavit filed by Mr. Uttam Zinzurde before the Additional Sessions Judge stating that two days prior to the occurrence of the incident of commission of suicide, deceased and the affiant had been to the appellant where he insulted the

deceased over his cast and feeling insulted, he committed suicide. It has also been pointed out that in the First Information Report, it is categorically stated about there being transaction between the appellant and deceased and since the appellant was not paying money, it has become a ground for the deceased to drive himself to commit suicide.

6. At the outset, this Court is required to consider as to whether prima facie offence of abetment to commit suicide is made out against appellant on the basis of contents of First Information Report and other material placed on record. No doubt, this Court is not expected to undertake minute assessment of evidence at this stage, however, there is obligation on the Court to at least prima facie ascertain any case being made out against appellant. The material on record is taken into consideration for this limited purpose.

7. This Court therefore needs to consider at this stage as to whether there is prima facie material on record to indicate any act of instigation or abetment to the commission of suicide by the deceased at the hands of the appellant. Merely because name of the appellant is mentioned in the suicide note, ipso facto it can not lead to hold

that such person has aided or abetted the suicide. At this stage, it would be relevant to consider judgment of Hon'ble Supreme Court in case of Gurucharan Singh vs. State of Punjab, **AIR 2020 Supreme Court 4714**, wherein it is held thus :-

“17.In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

To attribute an accused an act of abetment, there has to be some causal connection /proximity of the acts, with suicide. There must be a positive act on the part of accused to push deceased into such a position that he is left with no other choice but to end his life. In this regard, it is pertinent to note that in the suicide note apart from naming the present appellant, there is no further statement as to how he is responsible for his death. Deceased, therefore, does not attribute any particular act against the appellant. On the other hand, there are other statements in the suicide note

itself, which, on the face of it, indicate deceased was fed up with appellant, his relative, adjoining land owner, administration and principleless political activists. Even in the First Information Report, it is stated that deceased used to be under mental pressure on account of harassment caused to him by his relatives and adjoining land owner.

8. It is sought to be contended that owing to the transaction in respect of plot, money was due to the deceased from the appellant which was not paid. During the course of hearing a specific query was made to the learned counsel for the informant to point out at least some material direct/indirect to indicate existence of any such transaction. Learned counsel for the informant, on instructions, made statement that except for the statement in the First Information Report, there is no material to indicate any such transaction. Thus, at this stage, there is absolutely no material on record to show any transaction between deceased and appellant which drove him to commit suicide, reference of which is found in the First Information Report.

9. Insofar as allegations in respect of the plot in the society in the name of uncle of the deceased is concerned, the society was formed in the year 1960. The uncle of the deceased had died in the year 2000. Thereafter for 24 years no action was taken and the first complaint came to be made to the Hon'ble Chief Minister of State of Maharashtra on 05.08.2024. This Court, therefore, finds no reason/proximity in the issue with the act of commission of suicide.

10. It is sought to be argued on behalf of informant with the aid of affidavit of Mr. Uttam Zinzurde that an incident had occurred on 10.08.2024 in which, appellant is said to have insulted the deceased over his caste and as the deceased had taken the said insult to his heart, he committed suicide. However, in this regard, it is pertinent to note that the first informant is the son of the deceased but he does not claim his father having told him about occurrence of any such incident on 10.08.2024. It is for the first time after anticipatory bail application was filed before the Additional Sessions Judge i.e. on 16.08.2024, an affidavit came to be filed quoting such incident. This Court finds it difficult at this stage to accept the said contention of the person who claims that such incident had occurred as it is not possible to digest that the deceased never told this

incident to his son and if it was done so, it is not possible that the same would not be reflected in the First Information Report. Ex-facie this is an improvement sought to be done in case of prosecution.

11. Insofar as the bar created by Section 18 of the Atrocities Act is concerned, no doubt, the Hon'ble Supreme Court in paragraph No. 10 of the judgment in the case of Vilas Pandurang Pawar (supra) has held thus :-

“10. The scope of Section 18 of the SC/ST Act read with Section 438 of the code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no court shall entertain an application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope of appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

This, however, will apply when there is prima facie material to indicate offence being attracted under Atrocities Act. In the instant case, neither it is stated in the suicide note that on account of the deceased being a member of Scheduled Caste community, appellant has done something, which has driven him to commit suicide nor in the First Information Report it is so stated. There is nothing to indicate that applicant committed offence for the reason that deceased belongs to Scheduled Caste community. In the considered view of this Court, since there is no prima facie material on record to indicate applicability of Atrocities Act, the bar under Section 18 of the Act would not get attracted.

12. Though it is argued that there is criminal history against the appellant, since there is no prima facie material to indicate his involvement in the crime in question, the same cannot become sole ground for rejection of appeal.

13. Apart from above discussion, this is not a case that any recovery is to be done at the instance of the present appellant for which his custody is required. Having regard to the aforesaid facts, by imposing appropriate conditions and directing the appellant to

appear before the Investigating Officer, further investigation can be conducted effectively. Hence, the following order :-

ORDER

- (i) Appeal is allowed.
- (ii) In the event of arrest of appellant in connection with Crime No. 0447/2024 registered with Pathri Police Station, Dist. Parbhani for the offences punishable under Section 108 read with Section 3(5) of Bharatiya Nyaya Sanhita, 2023 and under Section 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, he be released on bail on furnishing PR Bond of Rs. 30,000/- (Rs. Thirty Thousand only) with one or two sureties in the like amount.
- (iii) He shall attend the concerned police station once in a week till filing of charge-sheet and co-operate in the investigation.
- (iv) He shall not contact the witnesses directly or indirectly.
- (v) He shall not interfere with the evidence in any manner whatsoever.

(vi) Learned AGP to communicate this order to the concerned Police Station.

(R. M. JOSHI)
Judge

dyb