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ANTICIPATORY BAIL APPLICATION NO.56 OF 2024

Dr. Abhinav Chandrachud i/b. Mr. Pawan Patil and Mr. Nitin Jagtap,
Mr. Yash Gaware, for the Applicant.
Mr. Bapu Holambe-Patil, APP, for the Respondent/State.
Mr. Harshad Sathe a/w. Mr. Siddesh Bane, for the Intervener.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 05, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. These applications are preferred for pre-arrest bail in connection with C.R. No. 441 of 2023 registered at Dighi police station for the offences punishable under sections 498-A, 306, 323 and 504 read with 34 of Indian penal Code, 1860.
3. Abhijeet, the applicant in ABA No. 56 of 2024, is the husband

of Aparna (the deceased) who was the sister of the first informant. Ashok Shinde, applicant No. 1 and Shobha Shinde, applicant No. 2 in ABA No. 3071 of 2023 are the parents of Abhijeet.

4. The indictment against the applicants, can be stated in brief as under:-

A] The marriage of the deceased was solemnized with Abhijeet on 5th February, 2012. They were blessed with a daughter. The deceased as well as the applicants were running a clinic. The first informant alleged that the applicants were subjecting the deceased to cruelty in order to coerce her to meet the unlawful demand of money to start a hospital. The deceased had paid amounts over a period of time. In the month of December, 2022 the applicants had allegedly subjected the deceased to harassment to coerce her to bring money. Upon being apprised by the deceased, the first informant had tried to reason with the applicants. However, they continued to abuse and harass the deceased. The first informant claimed that he had paid Rs. 2 lakhs to applicant Abhijeet by pledging gold ornaments.

B] On 15th September, 2023, Abhijeet had called the first informant and told him that the deceased was of no use and

was incompetent to earn money and therefore he was taking their daughter to their native place at Kolhapur. Despite the requests of first informant, Abhijeet allegedly took away his daughter without intimation to the deceased. The latter contacted the applicant on phone. They did not respond. The deceased was not allowed to speak with her daughter. When the deceased and the first informant went to the house of the applicants, the latter humiliated them. The first informant alleged, unable to bear the ill-treatment and harassment, the deceased died by suicide on 17th September, 2023.

5. Apprehending arrest, initially Ashok and Shobha, the applicants preferred ABA No. 3071 of 2023.

6. By an order dated 1st November, 2023 this Court was persuaded to grant interim protection to the applicants while directing them to join in the investigation. This Court observed inter alia as under:-

4] The learned counsel for the applicants submitted that the marriage of the deceased with the son of the applicants was solemnized prior to 12 years. Their marital life was afflicted with discord. However, the allegations in the first information report do not make

out a case of abetment to suicide.

5] In opposition, the learned APP submitted that there are specific allegations against the applicants. Laying emphasis on the incident which transpired on 15th September, 2023, the learned APP submitted that the conduct of the applicants constitutes abetment to commit suicide.

6] Indeed the allegations in the first information report show that there was marital discord between the parties. The first informant alleged that there was unlawful demand and he had paid money to the husband of the deceased. The alleged trigger for suicide was the incident which occurred on 15th September, 2023. It seems that the husband of the deceased had taken away their daughter and on that count there were altercations. Whether the act of the applicants to turn away the deceased out of their home had the propensity to make the deceased commit suicide warrants consideration. It may, therefore, be appropriate to grant interim protection while directing the applicants to join in the investigation.

7. The first informant has preferred an application for

intervention bearing No. 32 of 2024 in ABA No. 3071 of 2023.

8. I have heard Dr. Abhinav Chandrachud, the learned counsel for the applicants, Mr. Bapu Holambe-Patil, learned APP for the State and Mr. Harshad Sathe, learned counsel for the Intervener.

9. Dr. Chandrachud, the learned counsel for the applicants, submitted that the marriage of the deceased and applicant Abhijeet was solemnized prior to 12 years. The allegations of unlawful demands have been made in the FIR with a view to falsely implicate applicants. In fact, there was marital discord between the applicant Abhijeet and the deceased, who was insistent on dissolving marriage. The deceased used to rake up quarrels with the applicants and therefore Abhijeet as well as Ashok had approached the police and NC complaints were lodged. Attention of the Court was invited to NC complaint dated 8th July, 2023 lodged by Abhijeet and the complaint lodged by Ashok on 5th September, 2023. Attention of the Court was also invited to the messages exchanged between Abhijeet and deceased on Whatsapp, in support of the submission that the deceased was repetitively insisting that the marital bond should continue on her terms or for divorce.

10. On the contrary, the learned APP submitted that the allegations in the FIR make out a strong case of abetment to commit suicide. Laying emphasis on the incident which allegedly occurred at the residence of the applicants, at their native place, when the first informant and the deceased had visited them, the learned APP submitted that the acts of the applicants can be said to be the direct cause of suicide by the deceased.

11. Mr. Sathe, the learned counsel for the intervener, laid emphasis on the fact that there is material to show that even the first informant had paid money to meet the unlawful demand of the applicants. Attention of the Court was invited to a statement of account of the first informant which indicates that on 3rd December, 2022 a sum of Rs. 2 lakhs was transferred to the account of Abhijeet. Mr. Sathe submitted that the deceased was a strong lady and was appreciated for her work by conferring prestigious awards. The deceased would not have taken this extreme step, but for the unbearable harassment and ill treatment meted out to her by the applicants.

12. Dr. Chandrachud joined the issue by inviting the attention of the Court to the documents relied upon by the applicants to indicate

that there were a number of financial transactions, which indicate that amounts were transferred to the deceased as well as her relatives, including first informant, by the applicants. Dr. Chandrachud also placed reliance on a Mutation Entry which evidences transfer of an immovable property in the name of the deceased, worth Rs. 28 lakhs.

13. I have carefully perused the allegations in the FIR and the material on record. From the perusal of the material on record, it appears that after about a decade of marriage, discord struck the marital life of Abhijeet and deceased. In the FIR as well as the statements of the relatives of the deceased recorded under section 164 of the Code, there are allegations that unlawful demands were made and the deceased was coerced to meet the unlawful demands. However, the allegations are required to be appreciated in the light of the entirety of the circumstances as borne out by the material on record.

14. Evidently, the marital discord had reached such a pass that the applicants Abhijeet and Ashok had reported the matter to police. The exchange of messages between the parties on Whatsapp prima facie indicates that the marital dispute had reached such a

proportion that the deceased insisted for divorce. In fact, an endeavour was made on behalf of the applicants to urge that on 14th September, 2023 itself, a notice seeking dissolution of marriage was addressed by Abhijeet to the deceased.

15. It is in the backdrop of these circumstances, the allegations of unlawful demand are required to be appreciated. On this score also, prima facie, there is material to show that there were financial transactions between the parties. Having regard to the situation in the lives of the parties, an inference of unlawful demand can not be drawn on the basis of an entry, pressed into service on behalf of the first informant, as there are documents which evidence multiple transactions between the parties. In any event, the allegations relatable to cruelty are not such that custodial interrogation of the applicants is warranted for an effective investigation.

16. As regards the offence punishable under section 306 of Penal Code, it is well recognized that to sustain a charge of abetment of suicide there ought to be a direct and proximate act of incitement or instigation to commit suicide. In the case of **Ude Singh and Others vs. State of Haryana**¹ after adverting to the previous pronouncement, the Supreme Court enunciated the legal position as

1 (2019) 17 Supreme Court Cases 301.

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.

16.1] For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the

accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2] We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is

concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self- confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.

17. On the aforesaid touchstone, if the facts which emerge from the material on record are considered, the allegations qua the applicants do not appear to be of such nature as to warrant custodial interrogation of the applicants for an effective investigation. The applicants appear to have roots in society. The possibility of fleeing away from justice seems to be remote. Likewise, in the circumstances of the case, the possibility of tampering with evidence also appears to be remote.

18. I am, therefore, impelled to protect the liberty of the applicants while directing them to join in the investigation.

Hence the following order.

ORDER

1] The order of interim bail dated 1st November, 2023 in ABA No. 3071 of 2023 is made absolute on the terms and conditions incorporated therein.

2] In ABA No. 56 of 2024, in the event of arrest in C.R. No. 441 of 2023 registered at Dighi police station, the applicant Abhijeet Ashok Shinde be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

3] The applicant Abhijeet shall cooperate with the investigation and attend Dighi police station, on 12th, 13th and 14th March, 2024 between 10 am to 1 pm and, thereafter, as and when directed.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall regularly attend the proceedings before the jurisdictional Court.

6] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

7] Applications stand disposed.

8] In view of above, Interim Application also stands disposed.

(N. J. JAMADAR, J.)