

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 472 OF 2024

Vinay Vishnupant Kale ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Chaitanya Pandse i/b Siddhi Bhosale, for Applicant.

Mr. R. M. Pethe , APP for State/Respondent.

Mr. Priyal Sarda, for Intervener.

Mr. Dilip Palve, PSI, Chandan Nagar Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 2nd APRIL, 2024

ORDER:-

1) This application is preferred for pre-arrest bail in CR No. 21 of 2024, registered with Chandan Nagar Police Station, for the offences punishable under Sections 306, 504 and 506 of the Indian Penal Code, 1860.

2) By an order dated 27th February, 2021, this Court was persuaded to grant interim bail opining, inter alia, as under:-

“3. The applicant and the son of the first informant were engaged in development of real estate, in partnership. The applicant used to provide the capital and the son of the first informant used to execute the projects.

4. The deceased died by suicide on 9th January, 2024. The first informant lodged a report with the allegations that the deceased was subjected to harassment by the applicant by insisting for repayment of the amount. The applicant had allegedly threatened to falsely implicate the deceased in cases and defame the deceased. The applicant allegedly coerced the deceased to execute an agreement on 27th December, 2023 acknowledging the liability to pay a huge amount, which was allegedly not due. Thus, the deceased committed suicide.

5. Mr. Pendse, the learned Counsel for the applicant invites the attention of the Court to a deed of partnership executed between the applicant and the deceased on 27th February, 2023 and the agreement dated 27th December, 2023 under which the deceased acknowledged liability to repay the amount. Therefore, no case for abetment can be said to have been prima facie made out qua the applicant, urged Mr. Pendse.

6. The learned APP resisted the prayer for pre-arrest bail. Attention of the Court was invited to the alleged suicide note which indicates the manner in which the applicant had allegedly subjected the deceased to harassment.

7. I have perused the allegations in the FIR and the copy of suicide note tendered by the learned APP. Prima facie, there were transactions between the applicant and the deceased. They have executed the project in partnership. In the circumstances, whether the agreement dated 27th December, 2023 was executed by the deceased under the pressure exerted by the applicant or the said agreement was out of the own volition of the deceased would be a matter for investigation. Whether the insistence for repayment of allegedly due amount constituted a direct or proximate act so as to compel the deceased to take the extreme step, also warrants consideration....”

3) Mr. Pendse, the learned Counsel for the applicant submitted that the applicant has appeared before the Investigating Officer and co-operated with the investigation. At this stage, further custodial interrogation of the applicant is not warranted to facilitate further investigation.

4) Mr. Pethe, the learned APP would, however, urge that the harassment at the hands of the applicant appeared to be such that the deceased was left with no option but to take such an extreme step. Therefore, the acts and conduct of the applicant would fall within the dragnet of abetment to commit suicide punishable under Section 306 of the Penal Code, 1860.

5) Mr. Sarda, the learned Counsel for the intervener supplemented the submissions of Mr. Pethe. Mr. Sarda invited the attention of the Court to the allegations in the FIR to the effect that on the day of occurrence, the deceased had received a call from the applicant at about 1 p.m. demanding the amount and threatened the deceased with dire consequences and at that time the deceased had expressed his helplessness before the first informant.

6) I have considered the aforesaid submissions. By a catena of decisions, it is well settled that in order to make out an offence punishable under Section 306 of the IPC, there ought to

be abetment as contemplated by Section 107 of the IPC on the part of the accused. The intention on the part of the accused to aid or to instigate or abet the deceased to commit suicide is the linchpin of the offence punishable under Section 306 of IPC.

7) A useful reference in this context can be made to a decision of the Supreme Court in the case of Ude Singh and Ors. V/s. State of Haryana¹, wherein after adverting to the previous pronouncements, the Supreme Court enunciated the legal position as 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

1 (2019) 17 SCC 301

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.”

(emphasis supplied)

8) Reverting to the facts of the case, there is prima facie material to show that there were financial transactions between the applicant and the deceased. An agreement dated 27th December, 2023 was executed between the applicant and the deceased wherein the deceased acknowledged certain liability. An insistence on the performance of obligations by the deceased, even if taken at par, prima facie, does not constitute an instigation to commit suicide. In the face of the material on record, as noted in the order granting interim bail, the question as to whether the insistence for repayment of the allegedly due amount constitutes a direct or proximate act so as to compel the

deceased to take such an extreme step would be a matter for adjudication at the trial.

9) In any event, custodial interrogation of the applicant does not seem to be warranted to facilitate further investigation. The applicant appears to have roots in society. Possibility of fleeing away from justice and tampering with evidence appears to be remote.

10) I am, therefore, impelled to make the order of interim bail absolute.

11) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The order of Interim Bail dated 27th February, 2024 is made absolute on the terms and conditions incorporated therein.

(iii) The applicant shall appear before the Investigating Officer as and when directed.

(iv) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for pre-arrest bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]