

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

**BAIL APPLICATION NO.3183 OF 2023**

Vijay Shantaram Sakpal

...Applicant

*Versus*

State of Maharashtra & Anr.

...Respondents

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Mr. Ganesh Gole a/w Ateet Shirodkar i/b Bhavin Jain, for the Applicant.  
Mr. P. P. Deokar, APP, for the Respondent No.1-State.  
Ms. Priyanka H. Chavan, for Respondent No.2.

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**CORAM: MADHAV J. JAMDAR, J.**

**DATED: 28th MARCH 2024**

**P. C.**

1. Heard Mr. Gole, learned Counsel for the Applicant, Mr. Deokar, learned APP for the Respondent No.1-State and Ms. Chavan, learned Counsel for the Respondent No.2.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:-

|   |                                |                                    |
|---|--------------------------------|------------------------------------|
| 1 | C. R. No.                      | 218 of 2023                        |
| 2 | Date of registration of F.I.R. | 18/04/2023                         |
| 3 | Name of Police Station         | Achole, District-Palghar           |
| 4 | Section/s invoked              | 376, 306 & 323 of the I.P.C., 1860 |
| 5 | Date of incident               | 17/04/2023                         |
| 6 | Date of arrest                 | 18/04/2023                         |
| 7 | Date of filing Charge-sheet    | 15/06/2023                         |

3. As per the prosecution case, the Applicant and the deceased were

in a consensual relationship outside of marriage for about three years. The age of the deceased and the Applicant at the time of incident was around 21 years and 36 years respectively. The Applicant is married and has two children from wedlock. The deceased died by suicide on 17th April 2023. The deceased sent a suicide note in the form of a WhatsApp message to her sister. The said suicide note shows that the Applicant was continuing in a relationship with the deceased by assuring her that he would divorce his wife. However, the WhatsApp message shows that the deceased thereafter formed an opinion that the Applicant was giving a false assurance that he would divorce his wife and that he would marry the deceased. The WhatsApp message also shows that the deceased wanted some images from the Facebook account of the Applicant to be deleted and that the Applicant refused to delete the same and that he assaulted the deceased and on the very day, the deceased died by suicide.

4. Mr. Gole, learned Counsel for the Applicant submitted that the Applicant was in a consensual relationship with the deceased. He submitted that in fact the Applicant wanted to get married with the deceased after divorcing his wife. He pointed out the statement dated 6th June 2023 of Amruta Vijay Sakpal i.e. wife of the Applicant and submitted that the Applicant had informed his wife that he wanted to divorce her. However, the Applicant's wife refused to accede to the said

demand for a divorce and she lodged a complaint against the Applicant. The said statement of the Applicant's wife also clearly shows that the Applicant was residing separately on the ground floor of the building wherein his wife along with their children is residing on the first floor. He therefore submitted that the offence under Sections 376 and 306 of the *Indian Penal Code, 1860* ("IPC") is not made out. He submitted that the deceased, with complete knowledge that there is age difference of 16 years between both of them and that the Applicant is married and that he has two children, was continuing in a consensual relationship with the Applicant for about 3 years. He relied on the decision of the Supreme Court in ***Prabhu v. State***<sup>1</sup> and more particularly pointed out paragraph nos.15, 17, and 18 of the said decision. He submitted that there are no antecedents against the Applicant.

5. On the other hand, Mr. Deokar, learned APP for Respondent No.1-State and Ms. Chavan, learned Counsel for Respondent No.2 submitted that the Applicant had been giving a false assurance to the deceased that he would divorce his wife and then he would marry the deceased. On that ground he established and continued physical relations with the deceased. They submitted that the deceased died by suicide under pressure. The deceased was pressurised by the Applicant and on giving a false assurance of marriage by divorcing his first wife, the Applicant continued with the physical relationship. Both of them submitted that

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1 2024 SCC OnLine SC 137

the Applicant had in fact assaulted the deceased on several occasions.

6. Ms. Chavan, learned Counsel for the Respondent No.2 relied on the decision of the Supreme Court in *Ude Singh v. State of Haryana*<sup>2</sup> and pointed out paragraph no.16. She submitted that as per the settled legal position, 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 die by suicide, the case may fall within the four corners of Section 306 of the 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 die by suicide, the accused may be held guilty of abetment of suicide and therefore the Bail Application be rejected.

7. Perusal of the record shows that the incident in question took place on 17th April 2023. F.I.R. was registered on 18th April 2023 and the Applicant was arrested on 18th April 2023. It is an admitted position that investigation has been completed and the Charge-sheet has been filed on 15th June 2023. As per the Charge-sheet, there are about 20 witnesses proposed to be examined by the prosecution. There is no further progress in the trial. Accordingly, the trial will take a considerably long time to conclude.

8. *Prima facie* there is substance in the contention of learned Counsel for the Applicant that the relationship between the Applicant

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<sup>2</sup> (2019) 17 SCC 301

and the deceased was consensual in nature. The deceased, with complete knowledge that the Applicant is a married person having two children and that there is an age difference of 16 years between her and the Applicant, entered into physical relations with the Applicant.

9. As far as the contention that the Applicant gave a false promise of marriage after divorcing his wife is concerned, the statement of the wife of the Applicant dated 6th June 2023 shows that the Applicant did in fact seek divorce and his wife declined to accede to the said demand. In fact as per the statement of Applicant's wife, the Applicant and his wife were residing separately. The Applicant was residing on the ground floor of a building wherein the wife of the Applicant and their children are residing on the first floor. In fact the said statement also shows that the wife of the Applicant has told the deceased to discontinue the said relationship with the Applicant as the Applicant is married having two children, however, the deceased refused to discontinue the said relationship. Thus, in the facts and circumstances of this case, *prima facie*, there is substance in the contention of learned Counsel for the Applicant that offence as alleged against the Applicant is not made out.

10. Mr. Gole, learned Counsel for the Applicant states that as several witnesses are from Palghar district, the Applicant will therefore not reside within District-Palghar and that the Applicant will reside near Hanuman Mandir, Bamandaya Pada, Pipe Line, Saki Vihar Road, Powai,

Andheri, Mumbai-400 072.

11. The Applicant does not have any criminal antecedents.
12. The Applicant does not appear to be at risk of flight.
13. Accordingly, the Applicant can be enlarged on bail by imposing conditions.
14. In view thereof, the following order:-

**ORDER**

- (a) The Applicant - Vijay Shantaram Sakpal be released on bail in connection with C.R. No.218 of 2023 registered with the Achole Police Station, District-Palghar on his furnishing PR. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.
- (b) The Applicant shall not enter the Palghar district after being released on bail, except for reporting to the Investigating Officer, if called, and for attending the trial.
- (c) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.
- (d) The Applicant shall report to the Powai Police Station, District-Mumbai Suburban once every week, on Sunday between 11.00 a.m. and 1.00 p.m. till the conclusion of the trial. The Police Inspector of Powai Police Station, District-Mumbai Suburban to communicate details thereof to the Investigating Officer.
- (e) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with

the facts of the case so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

15. The Bail Application is disposed of accordingly.

16. It is clarified that the observations made herein are *prima facie*, and the Trial Court shall decide the case on its merits, uninfluenced by the observations made in this Order.

[MADHAV J. JAMDAR, J.]