

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

ANTICIPATORY BAIL APPLICATION NO. 2794 OF 2024

Dnyaneshwar Punaji Kotwal

...Applicant

Versus

The State of Maharashtra

...Respondent

- Mr. Kuldeep U. Nikam a/w Mr. Om Latpate and Mr. Kalpesh Adhav, for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent.
- Mr. Sanjay Dayaram Chavan, PSI, Lonikand Police Station.

CORAM : MANISH PITALE, J.

DATE : 17th OCTOBER, 2024.

P. C. :

1. Heard, Mr. Nikam, learned counsel for the applicant and Ms. Bajoria, learned APP for the respondent – State.
2. The applicant is apprehending arrest in connection with First Information Report No.0853 of 2024, dated 02.09.2024, registered at Police Station Lonikand, District Pune City, for offences under Sections 352, 351(2) and 108 of the Bharatiya Nyaya Sanhita, 2023 (BNS).
3. In the present case the offence under Section 108 of the BNS i.e. abetment of suicide is a non-bailable offence.
4. The informant in the present case is the father of the deceased and the father-in-law of the applicant. In his statement, the informant has

given the details as to how the matrimonial life of his daughter i.e. the victim and the applicant was initially fine. But, thereafter it deteriorated to such an extent that the victim had no alternative but to commit suicide. It is stated in detail as to how the applicant had gradually become addicted to alcohol and how he was inflicting violence on the victim.

5. The learned counsel for the applicant submits that even if the allegations made in the statement, leading to registration of the FIR, are to be considered, the ingredients of the offence under Section 108 of the BNS are not made out. It is submitted that the allegations made in the present case do not even *prima facie* indicate that the applicant acted in the aforesaid manner with the intention to instigate the victim to commit suicide. It is submitted that the applicant is ready to cooperate with the investigation and to abide by the conditions that may be imposed by this Court.

6. On the other hand, the learned APP has vehemently opposed the present application. She submits that the conduct of the applicant was such that there was no alternative left for the victim but to commit suicide. He submits that if this is not an instigation for committing suicide, then what could be said to be instigation. It is submitted that the statement of the informant describes in graphic detail as to the violence inflicted by the applicant on his own wife i.e. the victim even during the period proximate to

the actual extreme step taken by the victim. It is further submitted that the witnesses in the present are residing in the vicinity and therefore, granting relief to the applicant may interfere with fair investigation into the matter.

7. It is to be noted that offence under Section 108 of the BNS, which pertains to abetment of suicide, has to be appreciated in the backdrop in the definition of abetment given in Section 45 of the BNS. A perusal of the same shows that a person is said to have abetted dying of a thing if he or she instigates any other person to do that particular thing. It is settled law that the actions attributed to the accused in such a case have to be at least *prima facie* shown at this stage to have been undertaken with the intention to instigate the victim to commit suicide.

8. The statement of the informant, leading to registration of the FIR, at worst, indicates the reprehensible conduct of the applicant in consuming alcohol and inflicting violence on his wife i.e. the victim. At this stage itself, it would be difficult to reach a conclusion that the applicant acted with the intention to instigating the victim to commit suicide.

9. The learned counsel for the applicant is justified in relying upon the judgment of the Supreme Court in the case of *Bhagwan Das Vs. Kartar Singh and Others*¹, which arose in a case at the stage of discharge. After

1 (2007) 11 SCC 205

discussing the position of law concerning Section 306 of the IPC, which is equivalent to Section 108 of the BNS, the Supreme Court held that the ingredients of the offence under Section 306 of the IPC were not made out.

10. In view of the above, this Court is convinced that a *prima facie* case is made out by the applicant in his favour. At the same time, it would be necessary to address the concerns expressed by the learned APP about the fact that the witnesses reside in the vicinity of the residence of the applicant. The same can be addressed by imposing appropriate conditions on the applicant.

11. In view of the above, the application is allowed in the following terms :

(A) In the event the applicant is arrested, he shall be released on bail, in connection with FIR Nos.0853 of 2024, dated 02.09.2024, registered at Police Station Lonikand, District Pune City, on furnishing PR Bonds of ₹ 50,000/- with one or two sureties each in the like amount, to the satisfaction of the Trial Court.

(B) The applicant shall remain present before the Investigating Officer on 19th October, 2024 between 10:00 a.m. and 12:00 noon and thereafter as and when called by the Investigating Officer.

- (C) The applicant shall not enter the jurisdiction of Police Station Lonikand, District Pune, except for complying with condition (B) hereinabove, till filing of the charge-sheet.
- (D) The applicant shall cooperate with the investigation.
- (E) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

12. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail.

13. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

14. The application is disposed of.

(MANISH PITALE, J.)