



(1)

6. & 8. aba.212 & 121.2024

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.212 OF 2024

Varsha @ Sonu w/o Ashish Kanetkar

Vs.

The State of Maharashtra, Through Police Station Officer Police Station,
Sonegaon, Nagpur City, Nagpur

AND

CRIMINAL APPLICATION (ABA) NO.221 OF 2024

Manisha w/o Prafulla Ambulkar

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Sonegaon, Nagpur City, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. K. Bhangde, Advocate for applicant in ABA No.212/2024 and
221/2024.

Mr. N. B. Jawade, APP for respondent/State in ABA No.212/2024.

Mr. A. B. Badar, APP for respondent/ State in ABA No.221/2024.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 03/05/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.34/2024 registered with Police Station Sonegaon, Nagpur City, District Nagpur for the offences punishable under Sections 304-B, 306, 498-A, 504 read with Section 34 of the Indian Penal Code, the applicants approached this Court for grant of pre-arrest bail.

2. Learned Counsel for the applicants submitted that the accusation against the present applicants is on the basis of report lodged by Kunal Manoj Atkar on an allegation that his sister deceased Payal was married with one Nilesh Umbarkar i.e.

brother of the present applicants. After marriage, she was treated well for one and half year. Thereafter, she was subjected for ill-treatment at the hands of her in-laws and husband. He submitted that as far as the present applicants are concerned only allegation against them is that since the marriage of the deceased with the co-accused the applicants have not treated her well. Thus, he submitted that considering the role attributed to the present applicants general allegation is made. Moreover, the applicants are married long back and staying in their in-laws house prior to the marriage of the deceased and the co-accused. Thus, considering the allegations made, their custodial interrogation is not required, at the most offence under Section 498-A of the IPC is made out against them.

3. Learned APP strongly opposed the application on the ground that as far as the applicant Manisha is concerned, her name is mentioned in the suicide note. He further submitted that the death of the deceased is caused within seven years of marriage. There is specific allegation that she was subjected for the ill-treatment at the matrimonial place at the house of the present applicants. In view of that, the application deserves to be rejected.

4. After hearing the learned Counsel for both the parties and perused the recitals of the FIR. On perusal of the recitals of the FIR name of one of the

applicant Manisha appears to be there in the suicide note, but general allegation is made against her. The allegation is that both the applicants have ill-treated her and instigated her husband and as she fed up with the ill-treatment at the hands of the present applicants and co-accused, she had committed suicide and therefore, as per the prosecution the offence of abetment is made out against the present applicants. As far as the offence of abetment is concerned, now the aspect is well settled by the catena of decision of the Hon'ble Apex Court in the case of **Shabbir Hussain Vs. State of Madhya Pradesh** reported in **(2021) 17 SCC 801** wherein it has observed that in order to bring a case within the provision 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 instigating or by doing a certain act to facilitate the commission of suicide. The Hon'ble Apex Court further goes on to observe that mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC.

5. In the light of the above, observations there should be evidence as to the instigation which literally means to goad or urge to provoke or encourage to do an act which the person otherwise

would not have done. It is well settled that in order to amount to abetment there must be means rea. Without knowledge or intention there cannot be any abetment. As far as the allegations against the present applicants are concerned, which are general in nature which do not attract that there was any instigation or aiding at the hands of the present applicants. Considering the fact that their custodial interrogation is not required and the other co-accused are already arrested, the interim protection granted to the present applicants deserves to be confirmed. Accordingly, I proceed to pass following order:

ORDER

(i) The Criminal Application (ABA) No.212/2024 and Criminal Application (ABA) No.221/2024 are allowed.

(ii) In the event of arrest, in connection with Crime No.34/2024 registered with Police Station Sonegaon, Nagpur City, District Nagpur for the offence punishable under Sections 304-B, 306, 498-A, 504 read with Section 34 of the Indian Penal Code, the ad-interim protection granted to the present applicants namely **Varsha @ Sonu w/o Ashish Kanetkar and Manisha w/o Prafulla Ambulkar**, is confirmed on the similar terms and conditions.

6. Both the applications are disposed of.

(URMILA JOSHI-PHALKE, J.)