



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

CRIMINAL APPLICATION (ABA) NO.222 OF 2024

Sunil s/o Manikrao Tifane

Vs.

The State of Maharashtra, Through Police Station Officer, Police Station,
Mehkar, District Buldhana

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

Court's or Judge's orders

Mr. R. N. Ghuge, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/05/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.75/2024 registered under Section 306 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. Learned Counsel for the applicant Mr. Ghuge submitted that the allegation against the present applicant is on the basis of report lodged by Dnyaneshwar Manwatkar alleging that his father has committed suicide on 05/02/2024 due to the abetment at the hands of the present applicant. It is alleged that the deceased was residing along with his family and was working in the shop of one Nitin Garole at Mehkar. The deceased had taken loan of Rs.20,000/- from the present applicant for medical purposes and had returned Rs.10,000/- to the

present applicant and there was balance of Rs.10,000/-. The son of the present applicant and nephews were demanding the amount Rs.80,000/- to Rs.90,000/- from the deceased and were pursuing the deceased for money. The deceased owned a motorcycle bearing No.MH-28/BH-9024 and on 04/02/2024, the accused persons had taken the said motorcycle belonging to the deceased and told him that unless and until the remaining amount is paid, the vehicle shall not be returned. On 05/02/2024, the father of the complainant was at home since he did not have the vehicle to go for work and in the evening, it was intimated that his father has committed suicide by hanging himself. It is alleged that since there was continuous abetment at the hands of present applicant and the co-accused, he has committed suicide.

3. He further submitted that as far as the abetment at the hands of present applicant is concerned, only one chit of suicide note was found wherein the names of present applicant and other co-accused are mentioned. As far as the role of the present applicant is concerned, there is no proximity between the act of suicide and the harassment at the hands of the present applicant. The other co-accused are already released on anticipatory bail by the Sessions Court. The similar allegations are made against the present applicant. He also placed reliance on the decision of Division Bench of this

Court at Principal Seat at Mumbai in Writ Petition No.104/2021 and Writ Petition No.105/2021, wherein it is observed by the Division Bench of this Court that Section 306 of the Indian Penal Code has been analysed time and again by the Hon'ble Apex Court. The Hon'ble Apex Court in the case of **Shabbir Hussain Vrs. State of Madhya Pradesh**, reported in **(2021) 17 SCC 807** has observed that in order to bring a case within the provisions of Section 306 of the Indian Penal Code, 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 of Indian Penal Code.

4. It is further observed that a question arises as to when is a person said to have instigated another? The word of 'instigate' 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 *mens rea*. Without knowledge or intention there cannot be any abetment. The knowledge and intention must relate to the act said

to be abetted which in this case, is the act of committing suicide. Therefore, in order to constitute 'abetment by instigation', there must be direct incitement to do the culpable act.

5. In view of the above observation, he submitted that mere mentioning of the name in the suicide note is not sufficient to attract the provisions against the present applicant and therefore, the interim protection granted to him deserves to be confirmed.

6. Learned APP strongly opposed the said application on the ground that considering the deceased had committed suicide as there was continuous demand of money from him is sufficient to show the abetment at the hands of present applicant and therefore, prayer for grant of anticipatory bail deserves to be rejected. He also submitted that there are criminal antecedents against the present applicant that is also one of the consideration due to which the bail application of the present applicant deserves to be rejected.

7. Having heard learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR and observation of the Division Bench referring various decisions of the Hon'ble Apex Court. At this stage, considering the recitals of the FIR except the mentioning of the name of the present

applicant in the chit, there is no other material to connect him with the alleged offence. In what manner, he had abetted to commit the suicide is a matter of investigation, but for that purpose the custodial interrogation of the present applicant is not required. In view of that, the interim protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass following order.

ORDER

i] The application is allowed.

ii] The interim protection granted to the present applicant in connection with Crime No.75/2024 registered under Section 306 read with Section 34 of the Indian Penal Code, the applicant - **Sunil s/o Manikrao Tifane** shall be released on anticipatory bail by confirming his interim protection on the similar conditions.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)