



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

CRIMINAL APPLICATION (BA) NO.369 OF 2024

(Avinash Raju Pivaltkar Vs. The State of Maharashtra thr. PSO PS Jalamb, Dist.
Buldhana and another)

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

Court's or Judge's orders.

Ms. Anshula Paunikar, Advocate h/f Mr. S. V. Sirpurkar, Advocate for
Applicant.

Mr. A. G. Mate, APP for Non-Applicant No.1/State.

Ms. Chaitali S. Bhute, Advocate (appointed) for Non-Applicant No.2.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 2nd JULY, 2024.

1. Heard.

2. The applicant came to be arrested on 15.12.2021 in connection with Crime No.337/2021 registered with Police Station Jalamb, District Buldhana for the offences punishable under Sections 305, 376 (1), 376(2)(n), 376(2)(j), 376(2)(h) of the Indian Penal Code and Sections 4, 6 and 12 of the Protection of Children from Sexual Offences, Act, 2012.

3. The accusation against the present applicant is on the basis of report lodged by the father of the victim girl alleging that on 15.12.2021 father of the deceased girl got a phone call at 02:30 a.m. from Pradip Khalpe, who disclosed that he should come as early as possible on the railway track he immediately went and saw that his daughter was crushed

by the train therefore, he approached to the police station and lodged the report as present applicant has subjected her for sexual assault and she was pregnant and therefore, she committed suicide. One suicide note was also found along with the deceased wherein she has mentioned that she herself is committing suicide and nobody is responsible for her death. However, it is alleged that as present applicant has subjected her for sexual assault and which resulted into her pregnancy and therefore, she committed suicide. On the basis of said report, police have registered the crime against the present applicant.

4. Heard learned counsel for the applicant. Perused the investigation papers she submitted that as far as the abetment at the hands of the present applicant is concerned there is absolutely no material to show that in any manner the applicant has abetted to commit suicide. She placed reliance on the decision of the Division Bench at the principal seat in Writ Petition No.104/2021 along with the connected writ petition wherein law regarding abetment is extensively discussed by the Division Bench. By referring the judgment of *Shabbir Hussain v. The State of Madhya Pradesh* reported in **13 (2021) 17 SCC 807** it is held that in order to bring a case within the provisions of Section 306 of the 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 Supreme 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 IPC. In the light of the above observations she submitted that except the allegations by this order there is no material to show that the present applicant has abetted to commit suicide. She submitted on the contrary from the recitals of the FIR it reveals that victim was communicating with the present applicant and there was love affair between them and the physical relation was out of the said love affair. As far as by the victim is concerned the best reasons known to the deceased while she committed the suicide. Even the suicide note nowhere referred that due to the abetment at the hands of the present applicant she is committing suicide. Now investigation is already completed, charge-sheet is already filed, applicant is behind bar since the date of arrest i.e. from 07.05.2022. Further incarceration of the present applicant is not required. In view of that, he be released on bail.

5. Learned APP for the State and learned appointed counsel strongly opposed the said application on the ground that the victim was minor at the time of incident. The applicant has subjected her for sexual assault and she was pregnant, and therefore, she has committed suicide. As far as the further incarceration is concerned considering the gravity of the offence the application deserves to be rejected. They further submitted that the C.D.R. report

shows that there was continuous communication between the present applicant and the deceased and it was the applicant who abetted to commit suicide, and therefore, she has committed suicide.

6. After hearing the learned counsel for the applicant and the learned APP for the State. Perused the investigation papers from which it reveals that the recitals of the FIR itself shows that the informant has seen the deceased communicating with the present applicant. It shows that the deceased was in contact with the present applicant and the said relationship was out of love affair and both were the teenager. Due to the said physical relationship the deceased was pregnant and thereafter she has committed suicide. The suicide note was found along with the victim wherein she has specifically mentioned that nobody is responsible for her death she at her own is committing suicide. As far as the abetment is concerned though Investigating Officer has recorded various statements of the witnesses none of the witnesses have stated that there was any positive act on the part of the present applicant which compelled the victim to commit suicide. As observed by the Division Bench which is rightly pointed out by the learned counsel that to attract the provisions under Section 306 of the IPC in the light of the observations of the Hon'ble Apex Court in the case of *Shabbir Hussain v. The State of Madhya Pradesh* referred *supra* which shows 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 IPC. Herein the present case absolutely there is no material to show that in any manner the applicant has abetted her to commit suicide. Moreover, now investigation is completed, charge-sheet is already filed. Considering the nature of the evidence further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The application is allowed.
- b] The applicant – Avinash Raju Pivaltkar, shall be released on bail in connection with Crime No.337/2021 registered with Police Station Jalamb, District Buldhana for the offence punishable under Sections 305, 376 (1), 376(2)(n), 376(2)(j), 376(2)(h) of the Indian Penal Code and Sections 4, 6 and 12 of the Protection of Children from Sexual Offences, Act, 2012 on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- c] The applicant shall not induce, threat or promise to any witnesses who are acquainted with the facts of the present case.

d] The applicant shall attend proceeding before the Sessions Court without seeking notice.

7. The application is disposed of.

JUDGE

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