



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

CRIMINAL APPLICATION (ABA) NO.314 OF 2024

Mahadeo Baliram Gaikwad

Vs.

State of Maharashtra, Through Police Station Officer, Khamgaon City Police
Station, 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. Anshula Paunikar, Advocate h/f Mr. S. V. Sirpurkar, Advocate for
applicant.

Mr. A. G. Mate, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 11/07/2024

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.181/2024 registered with Police Station, Khamgaon City, District Buldhana for the offence punishable under Section 306 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by wife of the deceased namely Rupali Vinod Gour who has alleged that deceased owned a shop called 'Thakur Fibres' which he had been running about three years and on 05.04.2024, the deceased went to the shop around 12.00 p.m. and left the shop around 4.30 p.m. informing his son Amit that he would be late, and directing him to close the shop and go home. The deceased did not return home by 11.00 p.m., at

that point of time his wife called her relatives and her husband's relatives. On 06.04.2024, at around 6.00 a.m. the deceased's sister told the wife of the deceased to go the Police Station and filed a report. At around 1.30 p.m. the wife of deceased was called to the Police Station where she was informed that deceased had been brought to the Government Hospital, Khamgaon, where he was declared dead. It is further alleged that deceased had consumed poison, on the Khamgaon – Shegaon road near S.S.D.V, School. A bottle of poison had been found near the body of the deceased. It is further alleged that the deceased Vinod Gour had borrowed money from the applicant on an interest basis from time to time and these transactions are followed on various dates and therefore, deceased has committed suicide due to the harassment at the hands of the present applicant as present applicant had demanded the money and pressurizing him for the said money.

3. Learned Counsel for the applicant submitted that demanding the own money cannot be termed as harassment or abetment at the hands of the present applicant. She further submitted that the deceased had obtained some money from the present applicant as a loan and present applicant was demanding his own money back. Merely because deceased has mentioned his name in the suicide note is not sufficient to incarcerate him by putting him behind bar, his custodial interrogation is not required.

4. In support of her contention she placed reliance on **Criminal Application (APL) No.1052/2018 (Rohit s/o Nawanath Nalawade)** decided on 17.12.2020, wherein this Court by referring its earlier order in **Amit s/o Ashok Naharkar Vs. State of Maharashtra through its Police Station Officer, Wadi Police Station, Nagpur and another** reported in **2018 SCC OnLine Bom 1399**, wherein it is held that prosecution should at least, prima facie, establish that the accused had an intention to aid or instigate or abet the deceased to commit suicide. Abetment involves mental process of instigating a person or intentionally aiding a person in doing of a thing or without a positive act on the part of the accused or aiding or instigating or abetting the deceased to commit suicide, the said persons cannot be compelled to face the trial.

5. Thus, she submits that in the present matter the allegations are only in respect of demand of outstanding loan amount does not amount to any intention of applicant to abet the deceased to commit suicide and prays he be released on anticipatory bail.

6. Learned APP strongly opposed the said application on the ground that in the suicide note which is sent to the handwriting expert, it reveals that the applicant has abetted the deceased to commit suicide and therefore, the deceased has

committed suicide and custodial interrogation of the present applicant is required. He further invited my attention towards the statement of the wife of the deceased and submitted that from the statement of the wife of deceased it reveals that there was continuous harassment at the hands of the present applicant and therefore, deceased has committed suicide. In view of that, the application deserves to be rejected.

7. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that there was hand loan transaction between the present applicant and the deceased. The deceased has obtained some hand loan amount from the present applicant and present applicant was demanding the same. It is well settled that for attracting Section 307 there should be an instigation or aiding in the light of Section 107 of the Indian Penal Code and *prima facie* material should be there to show the proximity between the abetment and the suicide by the deceased. Recently, the Hon'ble Division Bench of this Court in **Writ Petition No.104/2021 and 105/2021** dated 17.03.2024 dealt with the issue of abetment and held that Section 306 of the Indian Penal Code, 1860 has been analyzed time and again by the Supreme Court. The Supreme Court in the case of **Shabbir Hussain vs. The State of Madhya Pradesh (2021) 17 SCC 807** wherein it is held that

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 IPC.

8. The word '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.

9. In view of the above observation, the only allegation against the present applicant is that he was demanding his own amount. The demanding the hand loan amount cannot be termed as an abetment at the hands of the present applicant. Considering the same, the incarceration of the present applicant is not at all required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The interim protection granted to the present applicant by order dated 07.05.2024 is hereby confirmed with condition that the applicant shall attend the

concerned Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. till filing of the charge-sheet and shall cooperate with the investigating agency.

(ii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)