



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

CRIMINAL APPLICATION (ABA) NO. 420 OF 2024

Tarkeshwar s/o Vaikunth Thakre Vs State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. D.R. Galande, counsel with Mr. C.B. Barve, counsel for applicant.
Mr. N.B. Jawade, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/07/2024.

1. By preferring this application filed under Section 438 of the Code of Criminal Procedure, 1973, the applicant is seeking pre-arrest bail, in connection with Crime No. 415/2024 registered with Police Station Hudkeshwar, Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860.

2. The informant is the daughter of the deceased Bhaskar Chaudhary. On 21/05/2024 at about 3.30 P.M., as per her allegation, her father left the house, and at around 6.30 p.m. one of the friends of the deceased, namely Rakesh Bhagat, informed the mother of the informant that the deceased was not picking up the calls, and then they came to know that the mobile phone of the deceased was at home. On 30/05/2024 at around 5.30 p.m., the informant came to know that her father committed suicide by consuming poison. On inquiry, it reveals to her that the present applicant and other co-accused have obtained the hand loan from the deceased and not repaid the said amount back,

therefore deceased has committed suicide. The suicide note was found alongwith deceased, wherein the name of the present applicant and other co-accused were mentioned. On the basis of the same, the crime is registered against the present applicant.

3. Learned counsel for the applicant submitted that, as far as the allegations are concerned, merely because the amount is not repaid by the present applicant is not sufficient to show that the applicant has abetted the deceased to commit suicide. He further submitted that from recitals of the FIR only it reveals that, the names of the present applicant and other co-accused was mentioned in the suicide note. As far as the abatement part is concerned, there is no material to show in what manner the applicant and other co-accused have abetted the deceased to commit suicide. Thus, custodial interrogation of the present applicant is not required and prays for releasing him on anticipatory bail.

4. Learned APP strongly opposed the said application on the ground that in suicide note, the deceased has in detailed written how much amount is obtained by the present applicant from the deceased, and after due efforts by the deceased, the said amount was not repaid back to the deceased, and therefore, he was depressed and he committed suicide. He submitted that considering the deceased has committed suicide due to the non-payment of

amount by the present applicant, which lead him to end his life therefore, application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that there was a money transaction between the deceased and the present applicant. The present applicant has obtained some hand loan from the deceased, which was not repaid. From the suicide note also, it is reflected that the present applicant has obtained Rs. 1,50,000/- from the deceased, and the said amount is not repaid by the present applicant therefore, the deceased has committed suicide. Whether this act of the applicant amounts to an abetment is to be taken into consideration. It is well settled that the deceased has committed suicide due to the abetment at the hands of the accused persons. This is not sufficient there should be some instigation adding to prove the abetment.

6. Recently, the Division Bench at Principal Seat has as considering this aspect when the ingredients of the abetment are fulfilled and by referring the judgment of the Hon'ble Apex Court in the case of *Shabbir Hussain vs The State of Madhya Pradesh [(2021) 17 SCC 807]*, it is held and observed 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 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.

7. In the light of the above observations of the Hon'ble Apex Court in the present case, except the statement that the amount is not repaid, no positive act is narrated by the deceased in the suicide note. Thus, as far as the abetment part is concerned, there is no positive part played by the present applicant. At this stage, the custodial interrogation 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) In the event of arrest, in connection with Crime No. 415/2024 registered with Police Station Hudkeshwar, Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860, applicant – Tarkeshwar s/o Vaikunth Thakre, shall be released on anticipatory bail, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned police station once in a week on Monday between

10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

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

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]