



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

CRIMINAL BAIL APPLICATION (ABA) NO. 443 OF 2024

Swapnil s/o Dnyaneshwar Jawarkar

Vs.

State of Maharashtra, Thru. PSO, Shirajgaon, Tq. Achalpur, Dist. Amravati

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. D.S. Khushlani, Advocate for applicant.

Mr. M.J. Khan, APP for non-applicant/State.

CORAM : SMT. URMILA JOSHI PHALKE, J.

DATE : 16.07.2024

Apprehending the arrest at the hands of police in connection with Crime No.316/2023 registered with Police Station Shirajgaon, District – Amravati, for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code, the applicant approached to this Court for grant of pre-arrest bail.

2. The accusation against the present applicant is on the basis of report lodged by Rohini Rahul Dakhane wife of the deceased. It is alleged that the five accused persons namely Sangesh Dhakde, Ankush Dhakde, present applicant and one Sandip and one Shashi induced the deceased to

invest the amount in a crypto currency, initially, he has received the benefits by the same but subsequently, he has not received the said benefits and the amount was duped. It is alleged that inducement by the present applicant and the other co-accused, he has invested the amount but he has not received the amount back and therefore, he has committed suicide. Thus, it was alleged that inducement at the hands of the present applicant, deceased has invested the amount, which he has not received back, resulted into suicide by him. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the ingredients of the offence are concerned there should be a positive act to abet the deceased to commit suicide, merely demanding the amount is not sufficient to made out the offence under Section 306 of the Indian Penal Code. As far as the custodial interrogation is concerned which is not required the offence is not made out against the present applicant and therefore, he be protected by granting anticipatory bail.

4. Learned APP strongly opposed the said application on the ground that present applicant and the other co-accused have abetted the deceased to commit suicide as they were demanding the amount. Moreover, the deceased has invested the amount on the instigation of the present applicant and the other co-accused and the deceased was duped. Due to the frustration, he has committed suicide, in view of that, the application deserves to be rejected.

5. After hearing the learned counsel for the applicant and learned APP for the State. Perused the investigation papers along with the deceased were suicidal note was seized by the investigating agency which shows that the name of the present applicant is mentioned in the said suicide note. It is alleged that, on their instance, he has invested the amount and now, the amount was not received by the back, he has also not received the benefits but the present applicants are harassing him for receipt of the said amount. It is well settled that in order to constitute an abetment, the abettor was shown up intentionally aided the commission of the crime. Mere, proof that the crime is charged could not have been committed without the interposition of the alleged abettor. The Hon'ble Apex Court in the case of ***Shabbir Hussain***

Vs. State of Madhya Pradesh and Ors. reported in (2021) 17 SCC 807 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 said occurrence are concerned, 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 has been positive action on the part of the accused proximate to the time of the occurrence which led to the suicide would not amount to an offence under Section 306 of the IPC.

6. In the light of the above observations, the facts of the present case are considered, except the name of the present applicant nothing is mentioned in the suicide note to show that the present applicant has abetted the deceased to commit suicide. Thus, considering the nature of evidence collected during the investigation, the custodial interrogation 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 :

ORDER

- (a) The application is allowed.
- (b) The applicant **Swapnil Dnyaneshwar Jawarkar** shall be released on anticipatory bail in connection with Crime No.316/2023 registered with Police Station Shirajgaon, District – Amravati, for the offence punishable under Sections 306 read with Section 34 of the Indian Penal Code, on executing PR bond of Rs.25,000/- with one solvent surety in the like amount.
- (c) The applicant shall attend Police Station once in a week on Sunday between 10:00 a.m. to 1:00 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 case.

7. The application is disposed of.

(SMT. URMILA JOSHI PHALKE, J)