



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

CRIMINAL APPEAL NO. 392 OF 2024

APPELLANTS:

1. Sahebrao Totaram Shirkare,
Aged about 55 years, Occu: Labour,
R/o Dhotardi, Tq. and District Akola.
2. Vitthal Panjabrao Mehenge,
Aged 29 years, Occ: Labour,
R/o Rokdiya Nagar, Shegaon,
Tah. Shegaon, District Buldhana.

...V E R S U S...

RESPONDENTS

1. The State of Maharashtra,
through Police Station Officer,
Shegaon City, District Buldhana.
2. Nitin R. Shegokar,
Aged about 28 years,
R/o Teen Putala Parisan Shegaon.

Ms. Anshula Paunkar, counsel h/f Mr. S.V. Sirpurkar, counsel for
the appellants.

Mr. H.D. Dubey, APP for respondent/State.

None for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 21/10/2024

ORAL JUDGMENT :

1. **Admit.** Heard finally with the consent of learned
counsel appearing for the parties.

2. Though respondent No.2 is served, none appeared on behalf of respondent No.2.

3. By this appeal, the appellants have challenged the order dated 22/07/2024 passed by the Special Judge, Khamgaon, District Buldhana in Anticipatory Bail Application No. 287/2024, by which the application for anticipatory bail of the appellants were rejected.

4. The appellants are apprehending the arrest at the hands of police in connection with crime no. 427/2024 registered with Police Station Shegaon City, District Buldhana for the offences punishable under Sections 108, 115(2), 351(2), 351(3), read with Section 3(5) of the Bharatiya Nyaya Sanhita (BNS); and Section 3(2)(va) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

5. Learned counsel for the appellants submitted that FIR is lodged on the basis of the report lodged by Nitin Rahul Shegokar alleging that he is residing along with his parents and brothers. On 06/07/2024, his father had been to the agricultural field for doing the agricultural work. At about 12.30 p.m. he came home, and on an enquiry disclosed that, when he was working in the agricultural field, he fell on the ground, at the relevant time, appellant No. 1, who was present at the adjoining place, laughed at him. Thereafter, the present appellants also teased him and threaten that, if he quarrel with them, they would assault him, and accordingly they assaulted his father. Thereafter, the informant, along with his father, went to the agricultural field and inquired

with the appellants why they had assaulted his father. At the relevant time, the appellants had come along with the stick and attempted to assault his father. It is further alleged that thereafter the appellants have filed a false FIR against them, and this fact came to the knowledge of his father, and therefore his father has committed suicide. On the basis of the same, the police have registered the crime.

6. Learned counsel for the appellants submitted that even considering the allegations as it is, the offence punishable under Section 108 of BNS 2023 is not made out, as that is not the abetment. The definition of the abetment shows there should be an aiding or instigation to constitute the abetment. He placed reliance on the decision of the Division Bench of this Court at Principal Seat in *Writ Petition No.104/2021 [Meenabai Deepak Mahale and others vs State of Maharashtra and another]* decided on 27/03/2024.

7. He submitted that, considering that no offence of abetment is made out against the present appellants, their custodial interrogation is not required. In view of that, they be protected by granting anticipatory bail.

8. Learned APP strongly opposed the said application and submitted that there is a prima-facie material against the present appellants, which reveals that, as the present appellants have filed the false criminal case against the sons of the deceased, and therefore, the deceased has committed suicide. Thus, there is direct evidence available to show that there was an instigation on

the part of the present appellants, which resulted into abetment, and resultantly the deceased has committed suicide.

9. I have heard learned counsel for both parties and perused the recitals of the FIR, from which it reveals that there was some scuffle between the parties, and out of that, there was an assault on each other, and therefore the present appellants have lodged the FIR against the informant and his brother. As far as the abetment part is concerned, now in the catena of the decision, it is held that for constituting the abetment, there should be an active role by or an instigation or by doing a certain act to facilitate the commission of suicide. The Hon'ble Apex Court in the case of ***Shabbir Hussain vs State of Madhya Pradesh and others [2021 17 SCC 807]*** has observed that in order to bring a case within the provision of [Section 306](#) 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 Court further observed 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](#) IPC. It is well settled that mere harassment is also not sufficient to attract the offence of abetment.

10. Considering the entire recitals in the FIR, merely because, the present appellants have lodged the FIR, is not sufficient to held that there was an abetment by the present appellants to commit suicide. Thus, at this stage, the bar under

Section 18(A) is not attracted, and therefore, the prayer for appellants for grant of anticipatory bail, deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The appeal is **allowed**.
- b] The order passed by Special Court, Khamgaon in Criminal Application No. 287/2024 [Sahebrao Shirkate+1 Vs State] dated 22/07/2024 is hereby quashed and set aside.
- c] In the event of arrest, the appellants – 1) Sahebrao Totaram Shirkare and 2) Vitthal Panjabrao Mehenge in connection with Crime No.427/2024 registered at police station Shegaon, District Buldhana for the offence punishable under Sections 108, 115(2), 351(2), 351(3) read with 3(5) of the Bhartiya Nyay Sanhita (BNS), 2023 and Section 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, be released on anticipatory bail on executing a P.R.Bond in the sum of Rs.25,000/- each with one solvent surety each, in the like amount.
- d] The appellants shall furnish their cellphone number(s) and address with address proof before the investigating officer.
- e] The appellants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal appeal is **disposed of** accordingly.

[URMILA JOSHI-PHALKE, J.]