



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

CRIMINAL APPLICATION (ABA) NO.561 OF 2024

Kailash Tulshiram Sakhare and another
Vs.
State of Maharashtra, Through Police Station Officer, Jalamb,
Buldhana

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

Court's or Judge's orders

Mr. M. N. Ali, Counsel for applicants.
Ms. Trupti Udeshi, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/08/2024

1. By this application, the applicants are seeking anticipatory bail in connection with Crime No.155/2024 registered under Section 108 and 3(5) of the Bharatiya Nyaya Sanhita (BNS), 2023.

2. The accusation against the present applicants is on the basis of report lodged by wife of the deceased namely Sandhya Shivaji Dhage alleging that her husband was serving as a Headmaster in Zilla Parishad School, Panchayat Samiti, Khamgaon. One Rahul Khanderao has obtained an amount of Rs.18 Lakhs from her husband as a hand loan. Thereafter her husband has demanded the said amount but said Rahul Khanderao has not returned the said amount to her husband and therefore, her husband has obtained the amount from Dr.Vishwambar Devman Zadokar and for payment of

the said amount, he was harassed. It is further alleged that though her husband repaid the amount thereafter also the present applicants were demanding the additional amount and visiting his school and humiliating him in presence of the other employees as well as the staff of the school. Being fed up with the same harassment, the deceased has committed suicide. On the basis of the said report police have registered the crime against the present applicants.

3. Learned Counsel for the applicants submitted that as far as the allegations against the present applicants are concerned, there was no money transaction between them and the deceased. As far as the custodial interrogation is concerned, which is not required. In view of that the interim protection granted to them deserves to be confirmed.

4. Learned APP strongly opposed the said application and submitted that after interim protection is granted to the present applicants, they have not attended the Police Station, they have not cooperated with the investigating agency, in such circumstances, it would be difficult for the investigating agency to investigate the matter. She further submitted that due to the continuous harassment at the hands of the present applicants, the deceased 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 recitals of the FIR, from which it reveals that out of money transaction, the alleged incident has occurred and the deceased has committed suicide. It is alleged that as the present applicants visited the school of the deceased and humiliated him in presence of the other staff and therefore, deceased fade up and committed suicide.

6. Learned Counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of **Shabbir Hussain Vrs. State of Madhya Pradesh and Ors. in Special Leave to Appeal (Crl.) No.7284/2017** and the **Criminal Writ Petition No.866/2021 [Lata vs. State of Maharashtra and another] decided on 22.09.2022**. The Hon'ble Apex Court considered the aspect of the abetment and held that in order to bring a case within the provisions of Section 306 of 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.

7. In the case of **Lata Vs. State of Maharashtra and another (supra)** also this Court has considered the catena of decisions and observed

that the principles that have been laid down by the Apex Court in the aforementioned judgments in the context of Sections 107 and 306 of the IPC, have to be applied to the facts of the individual case to conclude, as to whether the criminal proceedings deserve to be interdicted at this stage of FIR and charge-sheet itself or that the accused deserves to face trial.

8. At this stage, it would not be appropriate to comment on whether the abetment is made out or not but considering the allegation against the present applicants admittedly, the custodial interrogation of the present applicants is not required. As far as the contention of the learned APP is concerned that the applicants has not cooperated with the investigating agency and not attended the Police Station, stringent conditions deserves to be imposed on the present applicants. In view of that I proceed to pass following order:

ORDER

(i) The interim protection granted to the present applicants by order dated 01.08.2024 is confirmed with a condition that the applicants shall attend the concerned Police Station twice in a week on Monday and Thursday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(ii) On failure to attend the Police Station and cooperate with the investigating agency would lead to the cancellation of the bail.

(iii) The applicants shall not enter into the vicinity of village Onkar Nagari Ghatpuri Road Khamgaon, Taluka Khamgaon, District Buldhana, till filing of the charge-sheet.

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

(v) On failure of attending the Police Station even once, the Investigating Officer is at liberty to move to this Court for appropriate orders.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)