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

CRIMINAL APPLICATION (ABA) NO.593 OF 2024
(Hemant s/o Devidas Bhoyar and ors. Vs The 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

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Mr. A.S. Mardikar, Sr. Advocate a/b Mr. S.L. Kotwal, Advocate for applicants.
Ms S.S. Dhote, A.P.P. for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- OCTOBER 4, 2024.

Learned Senior Counsel for the applicants submitted that as far as applicant No.5 is concerned he is withdrawing the application as he has not approached to the Sessions Court and directly filed this application for grant of anticipatory bail.

2. Apprehending the arrest at the hands of police, in connection with Crime No. 319/2024 registered with Police Station Hingna, Tah. Hingna, District Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860, the applicant Nos.1 to 4 approached this Court for grant of pre-arrest bail.

3. The applicant Nos.1 to 4 are apprehending the arrest at the hands of police, as a crime is registered on the basis of report lodged by the wife of the deceased, on an allegation that her husband, Rahul Gomase, prior to

committing suicide sent WhatsApp messages and text messages on his mobile phone to the co-accused, namely Sachin Lakde and Surendra Shende, alleging that they have sold out the land of his father without informing him. It is further alleged that applicants Nos.1 to 4 and co-accused Surendra Deorao Shende and one Sachin Lakde made a conspiracy against the deceased and demanded money, and therefore, he was constrained to commit suicide. On the basis of the said report, police have registered the crime against the present applicants.

4. Heard learned Senior Counsel for the applicants. He invited my attention towards the documents, which shows that initially there was an agreement to sell between the deceased and applicant No.1. As per the said agreement to sale, the consideration amount was fixed at Rs.90,11,000/- to purchase the property bearing survey No. 44/B, ad-measuring 3.66 HR. Subsequently, the deceased has not executed the sale-deed, therefore, applicant No.1 has filed Special Civil Suit No.723/2023, which was withdrawn due to the settlement between the parties.

5. He further invited my attention towards the other sale-deed and submitted that subsequently, the said property was sold to the other co-accused namely Chabutai Surendra Shende, for the consideration approximately about of Rs. 1,64,00,000/-. Thus, it is a registered sale-deed which is executed in favour of the

said Chabutai Surendra Shende. The deceased was addicted to bad vices, and because of that, he committed suicide. He submitted that, as far as the attraction of Section 306 of the IPC is concerned, which itself is doubtful, as no positive act is attributable to the present applicants. In view of that, the interim protection granted to applicant Nos.1 to 4 deserves to be confirmed.

6. Learned APP strongly opposed the said application on the ground that the FIR is lodged by wife of the deceased, who specifically alleged that, due to the harassment at the hands of present applicants, the deceased has committed suicide, and therefore, custodial interrogation of the applicants is required. She submitted that after protecting the applicants by granting ad-interim protection, they have not cooperated with the investigating agency and not attending the police station.

7. After hearing learned Senior Counsel for the applicants and learned APP for the State, perused the recitals of the FIR, wherein it is only alleged that it was the present applicants and the other co-accused who hatched the conspiracy, and in pursuance of the said conspiracy, they were demanding the money from her husband, and therefore, he committed suicide. The documents placed on record further show that the deceased initially entered into an agreement with applicant No.1 for the sale of his immovable property. Subsequently, the said agreement to sell was cancelled,

and prior to that, applicant No.1 filed a civil suit for specific performance, which resulted into the settlement. As per the said settlement, the agreement to sell was cancelled, and subsequently, the deceased has sold out the said property to one Chabutai Surendra Shende.

8. Moreover, on perusal of the recitals of the FIR, it reveals that the only allegation is that they have harassed the deceased and demanded the money. As far as the sale-deed is concerned, regarding the property which agreed to sale, initially applicant No.1 and subsequently to the another person sold out by the registered sale-deed. Section 306 of the Indian Penal Code, 1860, has been analyzed time and again by the Hon'ble Apex Court.

9. The Hon'ble Apex Court in the case of ***Shabbir Husain vs State of Madhya Pradesh (2021) 17 SCC***, wherein it has been 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 Apex 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 of the IPC.

10. At this stage, whether the offence is made out or not is not to be considered, but whether the ingredient of the offence is made out, there is no positive act alleged by the informant in the FIR. Considering the nature of the transaction between the applicants and the deceased and considering the allegations, custodial interrogation is not required immediately. As far as the interrogation part is concerned, the applicants are already directed to attend the police station for the investigation purpose. Considering the statement made by the learned APP that applicants are not attending the police station and there is the statement of the learned Senior Counsel that the applicants have attended the police station, some stringent conditions to be imposed on the applicants. In view of that, the interim protection granted to the applicants deserves to be confirmed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) In the event of the arrest, in connection with Crime No.319/2024 registered with Police Station Hingna, Tah. Hingna, District Nagpur for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, 1860, the applicant Nos.1 to 4 by name (1)– Hemant s/o Devidas Bhoyar (2) Pyaru s/o Rashidkhan Pathan (3) Prabhakar s/o Govinda Lekurwale (4) Kawdu

s/o Yeoduji Bhoyar, be released on anticipatory bail, on executing P.R. Bond of Rs.25,000/- each with one solvent surety each in the like amount.

(iii) Applicant No.5 – Surendra s/o Deorao Shende shall approach to the Sessions Court for grant of anticipatory bail and the Sessions Court shall consider the same on its own merits.

(iv) The applicant Nos.1 to 4 shall attend the concerned police station once in a week on Monday between 10.00 a.m. to 01.00 p.m., for a period of next two months and shall cooperate with the investigating agency. On failure to attend the concerned police station would result into the cancellation of bail.

(v) The applicant Nos.1 to 4 shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

*Divya