



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

CRIMINAL APPLICATION (BA) NO. 1036 OF 2024

SATISH BABARAO WANKHEDE 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. P.S. Chawhan, counsel for applicant.

Mr. Nitin Autkar, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27/11/2024.

1. The applicant came to be arrested on 05/08/2024 in connection with Crime No. 376/2023 registered with Police Station Mahagaon, Tah. Mahagaon District Yavatmal for the offence punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Pandurang Yadavrao Kadam, father of the deceased, on an allegation that the deceased Priyanka was his daughter, whose marriage was performed with the co-accused Vilas Sidoba Wankhede in the year 2013. After marriage, she resumed cohabitation at the house of the in-laws. Present applicant is her nephew. He was also allegedly residing with them. It is alleged that the deceased was initially treated well, but subsequently she was ill-treated for the demand of Rs. 5 lakhs. As the economic condition of the informant was not good, he could not fulfill the demand, and being fed-up with the said

ill-treatment, she has committed suicide by jumping into the Well. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who submitted that as far as the allegation regarding the harassment is concerned, which is general in nature. He submitted that the information on the disclosure as to the harassment allegedly made by the deceased to Ujwala Suryawanshi, who was the niece of the deceased. The statement of the said niece Ujwala was recorded by the investigating agency after five days of the incident. The recitals of the First Information Report (FIR) show that the informant came to know about the phone call and the harassment at the hands of the present applicant, on the basis of the disclosure by the said Ujwala Suryawanshi. However, in the said disclosure, the informant nowhere stated that said Ujwala Suryawanshi informed him that the deceased was subjected for the sexual assault by the present applicant. He submitted that, as an afterthought after five days of the incident, the said allegation is levelled against the present applicant, only to show the gravity of the offence.

4. He further submitted that now the investigation is already completed and charge-sheet is already filed; as far as the allegation of the ill-treatment is concerned, which is general in nature, further

incarceration of the present applicant is not required. In view of that, he be protected by granting regular bail.

5. Learned APP strongly opposed the said application and submitted that the victim was not only sexually harassed by the present applicant, but she was subjected for sexual assault also by the present applicant. The statement of Ujwala Suryawanshi, who is the niece of the deceased, to whom the deceased has made a disclosure statement, sufficiently shows the allegation against the present applicant is of a serious nature. Moreover, after the incident, the applicant was absconding for four to five months, and recently he was arrested. Considering the said fact, there is every likelihood of tampering of the witnesses as well as fleeing away from the Court of justice. In view of that, the application deserves to be rejected.

6. After hearing both sides and investigation papers, it reveals that the deceased was married with the co-accused Vilas, and the present applicant is the nephew of the deceased, who was also allegedly residing along with her husband. It is alleged that other co-accused and the present applicant were ill-treating the deceased for the demand of Rs. 5 lakh, and being fed-up with the same, she has committed suicide. During the investigation, the statement of one Ujwala Suryawanshi, who is the niece of the deceased, was recorded, and from her statement, for the first time, it was alleged that the present applicant has also sexually assaulted the deceased; therefore, she

committed suicide. As far as this allegation is concerned, the recitals of the FIR are completely silent, as there was no disclosure by the said Ujwala Suryawanshi to the informant. The FIR report was filed by the informant after receipt of the disclosure by the said Ujwala Suryawanshi as to the harassment and as to the commission of suicide by the deceased. It is well settled that to attract the provision under Section 306 of the Indian Penal Code, there has to be material to show that the deceased was abetted to commit suicide by means of aiding, instigating, or by other modes given under Section 107 of the Indian Penal Code, 1860.

7. Furthermore, Section 306 of the Indian Penal Code, 1860, has been analyzed time and again by the Hon'ble Apex Court. The Hon'ble Apex Court in the case of ***Shabbir Hussain vs. The State of Madhya Pradesh (2021) 17 SCC 807*** has 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.

8. Moreover, a question arises as to when is a person said to have instigated another? The word of 'instigate' literally means to goad or urge to provoke or encourage to do an act which the person otherwise would not have done. It is well settled that in order to amount to abetment there must be *mens-rea*. Without knowledge or intention, there cannot be any abetment. The knowledge and intention must relate to the act said to be abetted, which in this case is absent. However, whether there was an abetment or not is a matter of evidence. At this stage, considering the nature of the statements which are recorded and the fact that now the investigation is already completed and charge-sheet is already filed, further incarceration of the applicant is not required. In view of the above facts and circumstances, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] The applicant – Satish Babarao Wankhede, shall be released on bail, in connection with Crime No. 376/2023 registered with Police Station Mahagaon, Tah. Mahagaon District Yavatmal for the offence punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code, 1860, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall not enter into the vicinity of village Virsani, Tah. Himayatnagar, District Nanded till culmination of the trial.
- d] The applicant shall not induce, threat of promise any witnesses who are acquainted with the facts and circumstances of the case, either physically or through electronic media.
- e] The applicant shall attend the proceedings before the Sessions Court without seeking an exemption unless there are exceptional circumstances.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]