



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

CRIMINAL APPLICATION (BA) NO. 1079/2023

Roshan Kanetkar

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. G.B.Hemke, counsel for the applicant.

Mr. N.R.Rode, APP for the non-applicant/State.

Ms. Kiran P. Wathore, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/01/2024.

1. The present application is filed by the applicant for grant of bail, in connection with Crime No.484/2023 registered with Police Station Shanti Nagar, District Nagpur, for the offence punishable under Section 306 of the Indian Penal Code, 1860. The applicant came to be arrested on 08/10/2023 and since then he is behind bar.

2. The accusations against the present applicant is on the basis of a report lodged by Javed Mohammad Ali Sheikh, father of the deceased, on an allegation that the deceased is her daughter and taking education. The present applicant was working in his Spare-Part Shop and was harassing the victim and insisting to perform the marriage with him, as the victim girl was not ready for the same. The present applicant blackmailed her on several occasions therefore, his daughter has committed suicide.

On the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that even taking the allegation as it is, the offence under Section 306 of the Indian Penal Code is not made out, as there was no abatement at the hands of the present applicant. He invited my attention towards the investigation papers which show that from the electronic evidence, the chit-chatting between the deceased and the present applicant was collected by the investigating officer which also nowhere discloses that it was the present applicant because of whom, she committed the suicide. He further invited my attention towards her communication with the other friends which shows that there are other reasons also for commuting her suicide. Now, that the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required and hence, he be released on bail.

4. Learned APP strongly opposed the present application on the ground that it was the present applicant with whom on the earlier night she was chit-chatting and thereafter, she shut down the video call and committed suicide. It was the present applicant, who was insisting on her marriage, and therefore, abatement was at the hands of the present applicant and she committed suicide. There is a prima-facie case against the present applicant and prays for the rejection of the application.

5. Learned counsel for the informant also strongly opposed the said application, on the ground that the communication between the victim and the present applicant is sufficient to show that the present applicant has abated her to commit suicide, he has also deleted some chats by switching off the video call. Thus, a prima facie case is made out against the present applicant and hence, the application deserves to be rejected.

6. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. The FIR is lodged by the father of the deceased, who alleged that the present applicant was insisting the deceased to perform the marriage with her for which, the victim was not ready and due to harassment at the hands of the applicant, she has committed suicide.

7. During the investigation, the statement of the sister of the victim is also recorded from which, it reveals that the victim has disclosed to her that she is having a love affair with the present applicant, but it was opposed by her parents. It further reveals from her statement that the applicant used to tell the victim that, as she is not communicating with her, he is addicted to bad voices and was insisting her to marry.

8. Moreover, I have perused the communication which is taken place between her and the applicant through video conferencing and also perused her communication with other friends. The screenshot of the

video call itself shows that there are other reasons also for her to commit suicide.

9. It is well settled that in order to constitute abatement, the abettor must be shown to have intentionally added the commission of the crime. Mere proof that a crime could not have been committed without the interposition of the alleged abettor is not enough. The compliance with the requirement of Section 107 of the Indian Penal Code to attract, the offence of abatement, the ingredients are that the person instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing if an act or illegal omission takes place; Thirdly - intentionally aids, by any act or illegal omission, the doing of that thing.

10. Thus for the purpose of attracting the abatement, there should be an intention on the part of the abettor to investigate the victim and there was no option for the victim but to commit the suicide.

11. At this stage, I am restraining myself to comment on the material collected during the investigation. Considering that, now the investigation is completed and charge-sheet is filed. The accusations against the present applicant is for an offence punishable under Section 306 of the Indian Penal Code for which, a punishment of more than 10 years is not provided. There is no apprehension that the applicant will flee away from

justice. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following the order:

- a) The criminal application is allowed.
- b) The applicant – Roshan @ Nikhil Shamrao Kanetkar, be released on bail, in connection with Crime No.484/2023 registered with Police Station Shanti Nagar, District Nagpur, for the offence punishable under Section 306 of the Indian Penal Code, 1860, on furnishing P.R. bond in the sum of Rs.25,000/- with one surety in the like amount.
- c) The applicant shall not enter into the vicinity of Shanti Nagar, Mudliyar Chowk, Nagpur till the culmination of the trial.
- d) The applicant shall attend the learned trial Court regularly without seeking any exemption unless there are exceptional circumstances.
- e) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]