



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

CRIMINAL APPLICATION (ABA) NO.766/2023
Chirag s/o Krishnarao Funde and anr

..VS..

State of Mah., thr.PSO Gondia City, Tahsil and District Gondia

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

Court's or Judge's Order

.....
Shri F.T.Mirza, Counsel for Applicants.
Ms.T.H.Udeshi, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 03/01/2024
PRONOUNCED ON : 09/01/2024

1. Heard.
2. By this application under Section 438 of the Code of Criminal Procedure, applicants seek pre-arrest bail in connection with Crime No.581/2023 registered with the non-applicant/police station for offences punishable under Sections 306 and 420 read with 34 of the Indian Penal code and 4, 5, and 12A of the Maharashtra Prevention of Gambling Act, 1887 (the said Act).
3. Mamta Ashokkumar Mankani, is complainant. She lodged a report with the non-applicant/police station. As per her report, on 28.7.2023 her son Neeraj committed suicide by hanging himself. On enquiry with friends of the deceased, she came to know that her deceased son used to play Online games

and betting from March 2022 to 28.7.2023 by using Gajanan App, Mahadev App, and other Online game applications and sustained huge loss. It is further alleged that applicants induced him for playing Online betting. The deceased lost huge amount which was obtained by him from applicants. The applicants demanded the same amount and threatened him and, therefore, he committed suicide. On the basis of the said report, the crime is registered.

4. Learned counsel Shri F.T.Mirza for applicants, submitted that even if allegations levelled against applicants are taken into consideration as it is, no offence of abetment of the suicide is made out against applicants. He further submitted that offences alleged are punishable with imprisonment upto ten years and for offences punishable under the said Act are only upto three years. The custodial interrogation of applicants is not required. He further submitted that recital of the First Information Report itself shows that the deceased was involving in playing Online games 2022 and nothing is on record to show that applicants induced him for playing the said games. On the contrary, statement of account of the deceased shows that he earned money from the said Online gaming. Merely because applicants demanded some amount which was given as hand

loan, is not sufficient to say that they have abetted the deceased to commit suicide. In support of his contentions, he placed reliance on the decision of the Honourable Apex Court in the case of **S.S.Chheena vs. Vijay Kumar Mahajan and anr, reported in (2010)12 SCC 190** and submitted that abetment involves a mental process of instigating. The Honourable Apex Court held that in order to convict a person under Section 306 of the Indian Penal Code, there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. As such, learned counsel prays that applicants can be granted pre-arrest bail.

5. *Per contra*, learned Additional Public Prosecutor Ms.T.H.Udeshi for the State strongly opposed the application on the ground that during investigation it revealed that the investigating officer seized mobile phones which were found to be formatted. Thus, applicants have not cooperated with the investigating agency. The said mobile phones are already sent to Forensic Science Laboratory for retrieving data. The mobile phone of the deceased was seized from one of his friends and it revealed that a friend of the deceased was asked by applicants to

delete WhatsApp Chats between the deceased and applicants. The said deleted WhatsApp chats have been retrieved which clearly show that applicants were agents of the Indian Exchange App and connected with one of accused Sontu @ Anant Jain. It is further submitted that applicants threatened the deceased by demanding the money and there was no alternative before the deceased but to commit suicide. Thus, applicants abetted the deceased to commit suicide. Considering the nature of the offence, the application deserves to be rejected.

6. After hearing learned counsel for applicants and perusing investigation papers, it reveals that the deceased was involved in playing Online gaming since March 2022, till the date of his death. It further reveals from recital of the First Information Report that he lost huge amount in the said betting. It is alleged that applicants induced him to play the Online gaming and amount was advanced him by applicants and now they demanded the said amount. During the investigation, the investigating officer recorded various statements which show that the deceased was involved in playing the Online gaming since long and also lost the huge amount. It is submitted by learned Additional Public Prosecutor for the State that due to loss of the amount, the deceased constrained to sell his mobile phone and

Laptop. However, statements of witnesses nowhere reflect that the deceased sold out the said mobile phone and Laptop to pay the amount which he lost in the said gaming. It is further alleged that the deceased was induced to play the said Online gaming. However, statements of witnesses viz. Manish Roy and others show that the deceased was involved in playing Online gaming and betting since 2019. He had purchased a MasterApp of Indian Exchange and asked others also to play the Online betting by selling the MasterApp to them. It further shows that he was playing the Online betting by using the Master of applicants. It also reveals that he used to purchase Rs.1000/- to Rs.5.00 lacs amount (which is referred as "Dabba") and while getting the said "Dabba", he was transferring the amount to applicants as well as others also. The investigating officer collected communications between applicants and the deceased which show that the deceased obtained the money from applicants and applicants were demanding the amount back. As per allegations, the deceased committed suicide as there was consistent demand by applicants.

7. Now, question is, whether the demand of money by applicants, who are creditors, is sufficient to commit the suicide.

8. The position of law is clear that *mens rea* is required to attract Section 107 of the Indian Penal Code. For proving the abetment of suicide, which is made punishable under Section 306 of the Indian Penal Code, Section 107 of the Indian Penal Code needs to be used and if there is nothing to show that there was such intention in existing of the accused, he cannot be proceeded for the offence of abetment of suicide.

9. On reading of Sections 306 and 107 of the Penal Code together, two things are clear; (a) that there must be abetment of the act of the commission of suicide, either by instigation, conspiracy or by giving an intentional aid, and (b) that the act which amounts to abetment must have some reasonable proximity and nexus with the actual commission of the suicide.

10. The question, now arises as to whether allegation made by the prosecution, that deceased Neeraj committed suicide, can be levelled against applicants of having committed offence punishable under Section 306 of the Indian Penal Code.

11. As per Section 107 of the Indian Penal Code, which reads as abetment of a thing, a person can be said to have

abetted in doing a thing, if he, firstly, instigates any person to do that thing; or secondly, 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 in pursuance of that conspiracy, and in order to the doing of that thing; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to the said Section states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the Indian Penal Code.

12. The Honourable Apex Court in the case of **Ramesh Kumar vs. State of Chhattisgarh**, reported in (2001)9 SCC 618 wherein it is held that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence.

Thus, to constitute "instigation", a person who instigates another has to provoke and urge or encourage doing of an act.

Thus, the law is extensively surveyed and principles are summarized and it is held that in cases of alleged abetment of suicide, there must be cogent and convincing proof of direct or indirect act(s) of incitement to the commission of suicide. Mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if accused is guilty of the act of instigation of the act of suicide.

13. In the light of the above well settled legal position, merely because the creditors have demanded the amount, it is not sufficient to hold that they have abetted to commit the suicide. The matters of committing suicide by debtors when it becomes impossible to return the debt are increasing day by day. Many persons help their friends and others by giving hand loans

or by selling goods on credit. They are bound to ask the debtor to pay the dues. If the debtor feels such demand as harassment, on the basis of that circumstance, inference cannot be drawn that situation was created by the creditors due to which no other alternative was left to the debtor than to commit suicide. If a debtor finds himself unable to return the amount and he takes such step, the persons who are entitled to recover the amount and who have prosecuted legal action, which is permissible under law, cannot be blamed for suicide of such person.

14. In the present case, allegation is that applicants were insisting to pay the amount which was given by them to the deceased to pay the Online betting. In my opinion, a reasonable proximity in the alleged act of abetment is not appearing. On the basis of allegations made by the prosecution, there is no material to show that there was no other alternative to the deceased but to commit suicide and, therefore, he has committed suicide. For attracting the instigation, there should be continuous course of conduct which creates a situation which leads deceased perceiving no other option except to commit suicide and the case may fall within the four corners of Section 306 of Indian Penal Code.

15. Here, in the present case, mere demand of money is not sufficient to hold that there was continuous course of conduct on the part of applicants inducing the deceased to commit suicide.

16. In this view of the matter, the application deserves to be allowed. Accordingly, I pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) In the event of arrest of applicants Chirag s/o Krishnarao Funde and Abhijit s/o Ramesh Donode, in connection with Crime No.581/2023 registered with the non-applicant/police station for offences punishable under Sections 306 and 420 read with 34 of the Indian Penal code and 4, 5, and 12A of the Maharashtra Prevention of Gambling Act, 1887, they be released on bail on they executing a P.R.Bond in the sum of Rs.25,000/- by each of them with one solvent surety of the like amount by each of them.

(3) The applicants shall attend the police station once a week i.e. Sunday between 10:00 am and 1:00 pm, till filing of

chargesheet and shall cooperate with the investigating agency.

(4) The applicants shall furnish their cell phone numbers with their address proofs to the investigating agency.

(5) The applicants shall not leave the jurisdiction of Gondia district without prior permission of the Court and shall surrender their passports (if any) before the investigating officer.

(6) The applicants shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or any police officer.

The application stands **disposed** of.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!