



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

**CRIMINAL APPLICATION (ABA) NO. 790/2023**

Gajanan Santosh Shingane and another V/s State of Maharashtra

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Office Notes, Office Memoranda of  
Coram, appearances, Court's Orders  
or directions and Registrar's order

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Court's or Judge's Order

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Mr. M.N.Ali, counsel for applicant

Mr. Nikhil H. Joshi, APP for the non-applicant/State.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 08/01/2024.**

1. By preferring this application, applicants are seeking pre-arrest bail, in the event of their arrest, in connection with Crime 673/2023 registered with Police Station Mehkar, District Buldhana, for the offences punishable under Sections 306, 504 and 506 read with Section 34 of the Indian Penal Code, 1860.

2. The applicants are apprehending arrest at the hands of Police as crime is registered on the basis of report lodged by wife of the deceased Lata Shankar Kakde, on an allegation that her husband Shankar Kakde had borrowed an amount of Rs. 15,000/- from applicant No.1 -Gajanan Shingane at 5% interest for purchasing sewing machine and thereafter, husband had returned the said money along with the interest. It is alleged that even after returning the amount prior to 15 days Gajanan and his brother had come to her house and threaten him to return the remaining amount. It is further alleged that on

21/11/2023, when deceased had been to the shop of Ajay Laddad for his work at about 3.00 p.m., Gajanan Shingane and his brother came on the said shop, demanded money from the deceased and threatened him. Due to which, deceased felt insulted and on the next day, he committed suicide by hanging himself. On the basis of said report, the Police have registered the crime against the present applicants.

3. Learned counsel Mr. M.N.Ali for the applicants submitted that as far as the allegations are concerned, in the suicide note, only it is mentioned that present applicants are responsible for the said suicide of the deceased. He further submitted that mere altercation is not sufficient to attract the ingredients of the offence against the present applicants. There is no instigation against the present applicants. He further submitted that there is no proximity between the two incidents and therefore, the allegation against the present applicants are not sufficient to attract the offence punishable under Section 306 of the Indian Penal Code, 1860.

4. In support of his contention, he placed reliance in the case of *M. Arjunan vs State represented by its Inspector of Police*<sup>1</sup> wherein the Hon'ble Apex Court held that essential ingredients of offence under Section 306 of the Indian Penal Code are abatement and intention of accused to aid or instigate or abet deceased to commit suicide. However, insulting deceased by using abusive

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<sup>1</sup> (2019) 3 SCC 315

language will not, by itself, constitute abatement of suicide. There should be evidence capable of suggesting that accused intended by such act to instigate the deceased to commit suicide. Unless ingredients of instigation/abatement to commit suicide are satisfied, accused cannot be convicted under Section 306 of the Indian Penal Code, the ingredients of offence against accused from whom deceased had borrowed money, not made out in the present case.

5. He further submitted that, in the present case also, the ingredients of Section 306 are not made out, custodial interrogation of the present applicants is not required. In view of that, they be protected by granting anticipatory bail.

6. The said application is strongly opposed by the State. The learned APP vehemently submitted that the deceased was abused in the shop, in presence of the other persons, by which the deceased felt insulted. This fact is corroborated by the CCTV footage which is collected during the investigation. Prior to the date 21/11/2023, the statement of the wife of the deceased also shows the deceased was threaten by the present applicants. Due to the instigation at the hands of the present applicants, the deceased has committed suicide. Thus, prima-facie case is made out against the present applicants. In view of that, criminal application deserves to be rejected.

7. Having heard learned counsel for the applicants and learned APP for the State, perused the recitals of the FIR and investigation papers. The nature of the allegation against the present applicants is that, the deceased has obtained the amount of Rs. 15,000/- and though he returned the applicants were demanding the money and was abused, due to which, the deceased felt insulted and committed suicide. It is well settled that for attracting the Section 306 of the Indian Penal Code, the abatement and the intention of the accused to aid or instigate or abet the deceased to commit suicide is to be proved. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abatement of suicide observed by the Hon'ble Apex Court. The abatement and instigation are explained by the Hon'ble Apex Court in catena of decisions. Now, it is well settled that, in view of the judgments of the Hon'ble Apex court that 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 Section 107 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".

8. The Hon'ble Apex Court in the case of ***Chitresh Kumar Chopra vs State (Govt. of NCT of Delhi)***<sup>2</sup> observed that to constitute the instigation the requirement of instigation requires to be satisfied. It is held that, 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. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

9. In the light of the well settled principles, if the facts of the present case are taken into consideration and after perusal of the investigation papers, it reveals that there was altercation of the words between the deceased and the present applicants. The present applicants have used abusing language but as observed by the Hon'ble Apex Court, the circumstances on record nowhere shows that there was no alternative for the deceased but to commit suicide, due to the act of the present applicants. It appears that a word uttered by the applicants in a fit of anger and there appears to be no intention. At this stage, considering

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<sup>2</sup> 2010 ALL MR (CRI) 1331 (SC)

the nature and the circumstances, in which alleged incident has taken place, the applicants have made out the case to protect them by granting anticipatory bail. In view of that, criminal application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order:

### **O R D E R**

- i) The criminal application is allowed.
- ii) The applicants – Gajanan Santosh Shingane and Devanand Santosh Shingane, in the event of their arrest, in connection with Crime 673/2023 registered with Police Station Mehkar, District Buldhana, for the offences punishable under Sections 306, 504 and 506 read with Section 34 of the Indian Penal Code, 1860, are released on anticipatory bail, on furnishing P.R. Bond in the sum of Rs. 25,000/- each with one solvent surety in the like amount.
- iii) The applicant shall attend the concerned Police Station once in a week i.e. Sunday between 10.00 a.m. to 01.00 noon till further orders, and shall cooperate with the investigating agency.
- iv) The applicant shall not induce, threat or promise any witnesses, who are acquainted with the facts of the present case.

- v) The applicant shall furnish their cell phone number(s) and address along with address proof before the investigating agency.
- vi) The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J]