



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

CRIMINAL APPLICATION (BA) NO. 136 OF 2024

NARESH S/O NANDUJI KAMADE

Vrs.

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

Shri R. M. Tahaliyani, Advocate for applicant.

Shri A. G. Mate, A. P. P. for respondent-sole.

CORAM: URMILA JOSHI-PHALKE, J.

DATE : 26/02/2024.

1. The applicant came to be arrested on 28/01/2024 in connection with Crime No.0008/2024 registered under Section 306 r/w Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the maternal uncle of the deceased namely; Roshan Bisan Bawankar, who alleged that the marriage of his niece was performed on 24/05/2015 with the present applicant. After marriage, whenever he used to communicate the victim, she disclosed that there used to be dispute between her and her in-laws. She also disclosed to her that she is being harassed by the present applicant and other family members. On 16/01/2024 when he had been at Chandrapur, he received a phone call of present applicant which disclosed that deceased met with an accident and

shifted to the hospital. When he came to the hospital, he came to know that the deceased succumbed to the death. On the basis of said report, police have registered the crime against the present applicant.

3. The learned counsel for the applicant submitted that as far as the recitals of the FIR are concerned, false and omnibus allegations are made against the present applicant. The marriage took place prior to 10 years and the deceased and present applicant is having small child of one and half year. As far as abetment is concerned, which is not made out as general allegations are made against present applicant. There is no allegation that either the applicant has demanded any amount or there is no material to show that there was continuous ill-treatment at the hands of present applicant and there was no option for the deceased but to commit suicide. Thus, there is no material to establish the abetment at the hands of present applicant. Now, investigation is practically completed. Further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned APP for the State strongly opposed the application on the ground that the death of the deceased is caused as she committed suicide by jumping in front of the Train and succumbed to the death. There was no other reason for the deceased to commit suicide but because of the harassment at the hands of present applicant and in-laws. He placed reliance on statement of

one Hina Vivek Dupare and submitted that from the said statement, it is crystal clear that the victim was subjected for the harassment and therefore, there was no other alternative for the victim to commit suicide and due to abetment at the hands of present applicant, she had committed suicide. He submitted that considering the same, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR. Admittedly, the death of the deceased is caused due to the dash by the Train. As per the statements of the witnesses and the CCTV footage, she jumped in front of the Train and sustained injuries and thereby committed suicide. As far as the abetment part is concerned, only allegation against present applicant is that he used to harass the deceased and therefore, deceased has committed suicide. To attract the abetment, in view of Section 107 of the Indian Penal Code, a person abets the doing of a thing who 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 in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing. To prove the charge of abetment, the prosecution is required to prove that the abettor had instigated the doing of a particular thing or engaged with one more other person or persons in any conspiracy for

the doing of that thing or intentional aid by act or illegal omission. The Hon'ble Apex Court has time and again reiterated that before convicting an accused under Section 306 of IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 of IPC is not sustainable.

6. Learned counsel for the applicant rightly placed reliance on Criminal Appeal No.1628/2022 decided on 12/10/2022 wherein the Hon'ble Apex Court has dealt with the issue and held that to convict a person under Section 306 of IPC, there has to be a clear mens rea to commit offence. It also requires an active act or direct act which leads the deceased to commit suicide finding no other option and the act must reflect intention of the accused to push the deceased into such a position that he commits suicide. The prosecution has to establish beyond reasonable doubt that the deceased had committed suicide

and the appellant No.1 has abetted the commission of suicide of the deceased.

7. Admittedly, for establishing the charge, there should be material to the extent to show that there was no other alternative left with the victim to put an end to her life. At this stage, it would not be appropriate to comment on the evidence collected during investigation. However, considering allegations which are general in nature. Now investigation is practically completed though the charge sheet is yet to be filed. Further incarceration of the present applicant is not required. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order :-

ORDER

- i] The application is allowed.
- ii] The applicant be released on bail in connection with Crime No.0008/2024 registered under Section 306 r/w Section 34 of the Indian Penal Code, on executing P. R. Bond of Rs.25,000/- with one solvent surety of the like amount.
- iii] The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.
- iv] The applicant shall furnish his cell phone number and address with address proof before the Investigating Officer.

8. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]

Choulwar