



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

932 ANTICIPATORY BAIL APPLICATION NO. 87 OF 2025

Kalpana Anand Toshniwal

VERSUS

The State Of Maharashtra And Another

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Advocate for Applicant : Mr. Rathi Swapnil S.

APP for Respondents-State: Mr. S. P. Sonpawale

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CORAM : ARUN R. PEDNEKER, J.

Dated : February 04, 2025.

PER COURT :-

1. Heard learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant is apprehending arrest in connection with FIR No.1158/2024, dated 16/12/2024, registered at Nanded Rural Police Station, District Nanded, for the offences punishable under sections 108 of the Bharatiya Nyaya Sanhita.
3. This Court, by order dated 21/01/2025, considering that the applicant is four months pregnant, had granted her interim protection. The learned Counsel for the applicant submitted that she is cooperating with the investigation.
4. The learned APP submits that the applicant is the second wife of the deceased and would frequently quarrel with him over the transfer of a jointly held property, as well as another property solely in the name of the deceased, which she insisted be transferred to her name. On the date of the alleged incident, 15/12/2024, at about 03:30 p.m., the deceased

called his mother and informed her that his wife had been fighting with him and had also assaulted him. He expressed that he was unable to bear the distress. Later that night, the deceased committed suicide. The learned APP contends that the applicant is responsible for abetting the suicide of the deceased.

5. The learned Counsel for the applicant relies on the judgment of the Hon'ble Supreme Court in ***Mahendra Awase v. The State of Madhya Pradesh (Criminal Appeal No. 221 of 2025, decided on 17/01/2025)***. The Hon'ble Supreme Court referred to paragraph 12 of its earlier judgment in ***Amalendu Pal alias Jhantu v. State of West Bengal, (2010) 1 SCC 707***, which states as under : -

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 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 the 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.”

In paragraph No.16 of the Judgment in case of **Mahendra Awase (Supra)**, the Hon’ble Supreme Court has observed as under : -

“16. In order to bring a case within the purview of Section 306 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 instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

6. In case of **Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618**, the Hon’ble Supreme Court observed as follows : -

“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. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case 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 been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

7. Considering the law laid down by the Hon'ble Supreme Court in the above judgments and the *prima facie* facts of this case, it is evident that the dispute between the husband and wife arose over the transfer of property. Even assuming the prosecution's case to be true, it only indicates that the applicant, being the second wife of the deceased, sought the transfer of property in her name. However, this cannot *prima facie* be considered as an act of instigation, nor is there any corresponding material suggesting that the applicant compelled the deceased to commit suicide. There is no evidence that the applicant's actions encouraged the victim to commit suicide. Additionally, considering that the applicant is four months pregnant, the interim protection granted to her is confirmed.

8. In view of the above, the application is allowed in the following terms : -

i] In the event the applicant is arrested in connection with FIR No.1158/2024, dated 16/12/2024, registered at Nanded Rural Police Station, District Nanded, for the offences punishable under

sections 108 of the Bharatiya Nyaya Sanhita, she shall be released on bail on furnishing PR bond of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

ii] The applicant shall attend the police station as and when called by the police.

iii] The applicant shall not tamper with the evidence of the prosecution in any manner. She shall not influence the informant, witnesses and other persons concerned with the case.

iv] The applicant shall co-operate with the investigation and also in the proceedings before the trial Court.

9. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

10. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial Court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.