



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

941 ANTICIPATORY BAIL APPLICATION NO. 1139 OF 2024

1. Vishal Vishnu Funde,
2. Rushikesh Vishnu Funde.

VERSUS

1. The State Of Maharashtra,
2. The Superintendent of Police, Beed.

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Advocate for Applicant : Mr. Shekade Shashikant E.

APP for Respondents-State: Ms. N. B. Kamble

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CORAM : ARUN R. PEDNEKER, J.

Dated : February 04, 2025.

PER COURT :-

1. Heard learned counsel for the applicants and the learned APP for the respondent-State.
2. The applicants are apprehending arrest in connection with FIR No.0084/2024, dated 23/05/2024, registered at Shirur Police Station, District Beed, for the offences punishable under sections 306 read with 34 of the Indian Penal Code.
3. This Court, by order dated 10/07/2024, granted interim protection to the applicant. The case against the applicants is that, suspecting the deceased of having an affair with the wife of applicant No.1, applicant No.1 made three phone calls on 24/04/2024 and seven calls on 25/04/2024 to the deceased. Additionally, applicant No.2, the brother of applicant No.1, made seven calls and seventeen calls on the respective dates. All these calls were answered by the deceased. It is stated that,

through these phone calls, the applicants threatened the deceased, warning him not to have an affair with the wife of applicant No.1. It is further stated that the deceased committed suicide due to the physical and mental harassment by the applicants/accused persons.

4. 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)***, 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."

5. In the 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."

6. In view of the allegations against the applicants, where it is claimed that the deceased had some relations with applicant No. 1's wife, and the applicants allegedly were calling and threatening the deceased, it is important to assess whether such allegations can establish a case under Section 306 of the Indian Penal Code. *Prima facie*, it cannot be seen as constituting an offence. As per the law laid down by the Hon'ble Supreme Court in above cited cases, it cannot be said that the applicants instigated the deceased to commit suicide or that they played any role in the commission of the suicide.

7. In view of the same, the interim protection granted to the applicants stands confirmed. The application is allowed in the following terms : -

i] In the event the applicants are arrested in connection with No.0084/2024, dated 23/05/2024, registered at Shirur Police Station, District Beed, for the offences punishable under sections 306 read with 34 of the Indian Penal Code, they 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 applicants shall attend the police station as and when

called by the police.

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

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

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

9. 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.

10. The application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.