



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2233 OF 2023

1. Ayub Khan Dilavar Khan Pathan
Age: 64 years, Occu.: Business,
2. Asif @ Ashir Ayub Khan Pathan
Age: 34 years, Occu.: Business,
3. Gulab Ayub Khan Pathan
Age: 41 years, Occu.: Business,

All R/o. Amir Mala, In front of Sunny
Palace, Nagar-Aurangabad Road,
Ahmednagar, Dist. Ahmednagar.

.. Applicants

Versus

1. The State of Maharashtra
Through its Investigation Officer,
Ahmednagar Camp Police Station,
Tq. And Dist. Ahmednagar.
2. Bashir Dilavar Khan Pathan
Age: 48 years, Occu.: Business,
R/o. Amir Mala, In front of Sunny
Palace, Nagar-Aurangabad Road
Ahmednagar, Dist. Ahmednagar
3. Shamina Bashir Pathan
Age: 39 years, Occu.: Housewife,
R/o. Amir Mala, Nagar-Aurangabad Road,
Bhurunagar Shivar, Ahmednagar.

.. Respondents

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Mr. N. B. Narwade, Advocate for the applicants.
Mr. A. R. Kale, Addl. Public Prosecutor for respondent No.1/State.
Mr. Ashish Jadhavar, Advocate for respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

**RESERVED ON : 25 JUNE 2025
PRONOUNCED ON : 28 JULY 2025**

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed for quashing the proceedings in Sessions Case No.181 of 2023 pending before the learned Sessions Judge, Ahmednagar arising out of the FIR vide Crime No.381 of 2022 dated 30.08.2022 registered with Ahmednagar Camp Police Station, District Ahmednagar for the offences punishable under Sections 307, 324 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. N. B. Narwade for the applicants, learned APP Mr. A. R. Kale for respondent No.1/State and learned Advocate Mr. Ashish Jadhavar for respondent No.2.

3. Learned Advocate appearing for the applicants submits that this is an interesting case in a way that the FIR came to be lodged for the offences punishable under Sections 307, 324 read with Section 34 of Indian Penal Code on 30.08.2022 on the basis of the alleged statement of deceased, but after investigation the charge-sheet has been filed for the offence punishable under Section 306 read with Section 34 of Indian Penal Code. In the charge-sheet, the investigating officer has stated that there is CCTV installed in the premises of one Hayat Khan Dilavar Khan Pathan, who is the brother of deceased and taking into consideration the said CCTV footage of which the transcript has been

given and also the statements of Daulatbee Dilavar Khan Pathan - mother of the deceased, Rukhsana Hayat Khan Pathan, Anjum Sameer Khan Pathan, Sana Ajj Khan Pathan, Ajj Khan Hayat Khan Pathan, Sameer Khan Hayat Khan Pathan, Munir Khan Sardar Khan Pathan and Raisa Munir Khan Pathan, the decision has been taken by him to file the charge-sheet for the offence punishable under Section 306 read with Section 34 of Indian Penal Code. If we consider the spot panchanama, then we can get the fact that the house of the accused is on the northern side of the road. Near to his house, there is old brick kiln. In front of that towards south, the chappals were found and there was also drum. The house of Gulab Khan and Hayat Khan are on the southern side of the road. The matchstick, burnt clothes were found in front of house of Gulab Khan Pathan. Only the family members of deceased are stating that the applicants had set the deceased to fire. Hayat Khan Pathan had also received the burn injuries and he was admitted to Saideep Health Care and Research Pvt. Ltd. i.e. the hospital where he had stated that his brother Bashir had ablazed himself and while extinguishing the fire, he had sustained injuries. His statement has also been recorded in the form of dying declaration immediately on 01.08.2022. There was property dispute that was going on between the brothers and it appears that due to those disputes, the deceased has tried to implicate the present applicants. The FIR cannot be therefore considered within the

parameters of Section 32 of the Evidence Act when the CCTV footage gives an otherwise picture. The Camera No.3 showed the position at 17.43.48 that Bashir Khan was coming and passing in front of the house of Gulab Pathan. At 17.43.51 hours, he found trying to ignite the matchstick from the matchbox in his hands. His clothes appear to be found wet and he was not wearing *Chappals*. He was going towards the house of Hayat Khan Pathan. Between 17.44.00 to 17.44.12 hours, he was found by standing in front of the gate of house of Hayat Khan Pathan igniting the matchstick and setting the right side part of his shirt to fire. Thereafter, he ran towards the backside of the house when his clothes were burning. It appears that thereafter Hayat Khan and others gathered and Hayat Khan tried to extinguished the fire. There is absolutely no evidence regarding abetment to commit suicide, if the prosecution intends to stick to Section 306 of Indian Penal Code. Under such circumstance, it would be an abuse of process of law, if the applicants are asked to face the trial.

4. Learned Advocate for the applicants relies on the decision of this Court in ***Vishnu Kisan Khedkar Vs. State of Maharashtra and another, (2022 DGLS (Bom.) 3356 : [2023 ALL.M.R. (Cri.) 238]*** to which one of us i.e. [Smt. Vibha Kankanwadi, J.] was party to the Division Bench, taking into consideration the catena of judgments, it was considered as to what are the ingredients of the offence to prove the

ingredients of Section 306 of Indian Penal Code. Here also, those ingredients are not getting attracted from the facts of the case.

5. Per contra, the learned APP for respondent No.1 and learned Advocate for respondent No.3 strongly opposed the application and submitted that though in the FIR the deceased had tried to give a different version, but the investigation revealed that the present applicants had instigated/abetted commission of suicide by deceased. There is a common agricultural land bearing No.29/1, 30/1 within the jurisdiction of Burhanpur. There is no partition in respect of the said land, still the accused persons had started making construction on the same. There were earlier quarrels those have taken place in respect of the said property and the partition. Even the *Murum* from the common property was sold. Every act was objected by the deceased, but his objection appears to have not been considered and the applicants were abusing, threatening him and telling him that he will not be given any share. Therefore, because of the harassment, the deceased had poured some inflammable substance from drum nearby his house and by going towards the house of Hayat Khan Dilavar Khan Pathan, he committed suicide. Still, there is scope for the trial Court to decide as to exactly which offence has been committed and, therefore, this will not be a fit case where the proceedings should be quashed and set aside under Section 482 of the Code of Criminal Procedure.

6. Perusal of the FIR would give impression that injured Bashir was in conscious state when his statement was recorded and, at that time, he has stated that around 4.00 p.m. on 30.08.2022, when he was near his house and was going towards Pan shop, the applicants came near him. Applicant Gulab Pathan caused injury on his left thigh with the help of some sharp weapon and thereafter, by catching him, the diesel which was in drum, was poured upon his person and, therefore, he went running towards his brother's house Hayat Khan Pathan. At that time, applicant Gulab Pathan threw burning matchstick on his person and as a result of which his clothes caught fire. One Munir Khan Pathan, brother Hayat Khan Pathan and Hayat Khan's son Sameer extinguished the fire. Sameer then admitted him to the hospital. Thereafter, the panchanama of the spot has been carried out and even statements of witnesses have been recorded. Statements of Daulatbee and others have been recorded on 31.08.2022 and all of them have stated that when Bashir came in front of house of Hayatkhan, he called mother, at that time, the clothes on his person were wet. He himself had ignited the matchstick from matchbox he was carrying and then set himself to fire. Thereafter, the statements of Shahrukh Pathan, who appears to be the nephew of deceased Bashir i.e. son of Nasirkhan, who was the brother of deceased Bashir, Shamina – widow of Bashir, Salman, who is son of deceased Bashir and brother-in-law of Bashir, Shaikh Nawaj Sikandar came to be

recorded on 18.09.2022. Except Shaikh Nawaj, all the others have stated that when they reached after the voice was raised by Bashir when he sustained burn injuries, Bashir told them the story as to how he was set to fire by the applicants. Here, now the question is that the police themselves appears to have disbelieved the story that was given by the deceased Bashir in his dying declaration. It was specifically asked to learned Advocate for respondent No.3 i.e. the widow of deceased Bashir as to whether she has challenged or taken any legal step challenging the charge-sheet for the offence punishable under Section 306 of Indian Penal Code, the answer was in the negative. She is the only person who can challenge the same. Of course, even at the time of framing of charge, the said point can be considered as to under which provisions then the charge is required to be framed, but if she was not satisfied with the investigation that was done, then she could have approached the Magistrate under Section 173(8) of the Code of Criminal Procedure for further investigation. The position therefore now remains is that the investigating agency/prosecuting agency has given up the story told in the dying declaration that the applicants had poured diesel upon the person of deceased Bashir and then set him to fire. Why the statements of widow, son, nephew and brother-in-law of deceased Bashir were taken belatedly can be seen from letter dated 17.09.2022 given by A.S.I. to these persons wherein it was stated that they were asked to remain

present for inquiry on 05.09.2022 at the police station, but they failed to appear and, therefore, they were asked to remain present on 18.09.2022. It appears that at earlier point of time they had approached the police to give their statements. Whatever they have stated taken as it is would be the oral dying declaration, which is weak kind of evidence. As against this, in the charge-sheet itself, there are statements of Daulatbee and others, which were taken on 31.08.2022 i.e. much earlier point of time i.e. on the next day of incident, wherein Daulatbee and Raisa (Daulatbee's grand daughter) and Munir Khan (Raisa's husband) were chitchatting on the swing in the tin porch opposite Hayat Khan's house around 5.30 to 6.00 p.m. Bashir Khan came and called Daulatbee as "माँ" and when Daulatbee looked at him, they found that Bashir's clothes were wet and he ignited a matchstick from the matchbox he was carrying and set himself to fire. Raisa started shouting and thereupon, other persons came running. In the meantime, Bashir Khan went in the narrow lane between Hayat Khan and Gulab Pathan's house. Now, there is supportive evidence in the form of CCTV footage which has been recovered and there is also the certificate under Section 65(b) of Evidence Act in which he has been seen that Bashir Khan had set himself to fire. Now, the question is whether there is evidence on record to even *prima facie* show that the present applicants had abetted the commission of the suicide by Bashir.

7. In ***Vishnu Kisan Khedkar (Supra)***, we have taken note of the decision in ***Chitresh Kumar Chopra vs. State (Govt. of NCT) of Delhi, [2009 16 SCC 605]*** and observed that :-

“10. In almost all the cases and especially in ***Chitresh Kumar (supra)***, it has been observed thus :-

“As per the Section, 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". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.”

Thereafter, in that case the decision in ***Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618*** was also taken note of and it has been observed thus :-

“16. Speaking for the three-Judge Bench in Ramesh Kumar case, R.C. Lahoti, J. (as His Lordship then was) said 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. 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.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition)."

The reason that was tried to be given is that there is dispute in respect of *Amir Mala* land, which is pending before the Court. That cannot be the ground or act of abetment. That may be the reason for dispute, but in order to bring the facts within Section 306 read with Section 107 of Indian Penal Code, active participation or act is necessary. We would like to rely on the decision in ***Prakash and Ors.***

Vs. The State of Maharashtra and Ors., [MANU/SC/1397/2024], in which catena of judgments have been considered and the Hon'ble Supreme Court held down that unless there is active role played by any accused, question of continuing with the prosecution for the offence under Section 306 of Indian Penal Code would not arise.

8. Therefore, taking into consideration the facts and the position of law, we are of the opinion that it would be an abuse of process of law, if the applicants are asked to face the trial. Hence, the following order :-

ORDER

I) Criminal Application stands allowed.

II) The proceedings in Sessions Case No.181 of 2023 pending before the learned Sessions Judge, Ahmednagar arising out of the FIR vide Crime No.381 of 2022 dated 30.08.2022 registered with Ahmednagar Camp Police Station, District Ahmednagar for the offences punishable under Sections 307, 324 read with Section 34 of Indian Penal Code, stands quashed and set aside as against the present applicants viz. (i) **Ayub Khan Dilavar Khan Pathan**, (ii) **Asif @ Ashir Ayub Khan Pathan** and (iii) **Gulab Ayub Khan Pathan**.

[**SANJAY A. DESHMUKH**]
JUDGE

[**SMT. VIBHA KANKANWADI**]
JUDGE

scm