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

CRIMINAL APPLICATION (APL) NO.999 OF 2025

1. Durgeshwari wd/o Narendra Thakre
About 35 Years,
Occupation : Bachat Gat,
R/o. Plot No.3, Khan Society,
Godhani, Nagpur.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Mankapur, Nagpur.
2. Anil s/o Shyamlal Thakre,
Age : 43 Years,
Occupation : Labour,
R/o. Plot No.3, Khal Society,
Behind Mass Kirana Store,
Mankapur, Nagpur.

....NON-APPLICANTS

WITH

CRIMINAL APPLICATION (APL) NO.829 OF 2025

1. Rahul s/o Madhukar Manohar,
About 42 years,
Occupation : Private,
R/o. House No.373,
Railway Station Road,
Godhani, Nagpur.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Police Station, Mankapur, Nagpur.
2. Anil s/o Shyamlal Thakre,
Age : 43 Years,
Occupation : Labour,
R/o. Plot No.3, Khal Society,
Behind Mass Kirana Store,

Mankapur, Nagpur.

....NON-APPLICANTS

Mr. A. S. Band, Advocate for applicants in both applications.

Mr. A. M. Joshi, APP for non-applicant No.1/State in both applications.

Mr. Vikas Bhoyar, Advocate for non-applicant No.2 in both applications.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/02/2026

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the State and learned counsel for the non-applicant No.2.

4. Both these applications are filed by the applicants under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for seeking quashing of the FIR in connection with Crime No.91/2025 registered under Section 108 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS') and consequent proceeding arising out of the same bearing RCC No.3610/2025 pending before the 12th Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur.

5. Brief facts which are necessary for the disposal of applications are as under:

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The applicant Durgeshwari wd/o Narendra Thakre is the wife of the deceased, whereas the applicant Rahul s/o Madhukar Manohar allegedly is the paramour of the said applicant Durgeshwari. It is alleged in the FIR lodged by the Anil s/o Shyamlal Thakre that the deceased is his younger brother whose marriage was performed along with the applicant Durgeshwari and they are having one daughter and one son from the said wedlock, but due to the matrimonial dispute between them, the applicant Durgeshwari was not residing along with him. On 17.02.2025, he received a phone call of his father and he disclosed that the room of the deceased is locked though he has knocked the door, but there is no response and therefore, the informant rushed to the house and door was broken and it revealed that the deceased has committed suicide by hanging himself. It is alleged that as the wife of the deceased was having illicit relation with another applicant i.e. Rahul Madhukar Manohar and therefore, being fed up he has committed suicide by hanging himself by noting the suicide note. On the basis of the said report, police have registered the crime against the present applicants.

6. After registration of the crime, the Investigating Officer has visited the alleged spot of incident, drawn the spot panchnama, seized the suicide note and recorded the relevant statements of the witnesses and after completion of the

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investigation submitted charge sheet against the present applicants.

7. Heard learned counsel Mr. Band for the applicants, who submitted that after considering the entire allegations levelled against the present applicants merely there was a relationship between the applicant Durgeshwari and another applicant Rahul is not sufficient to attract the offence punishable under Section 108 of the BNS. He invited my attention towards the report which was lodged immediately after the incident, on the basis of which, merg was registered. He submitted that the said report was immediately lodged on 17.02.2025, wherein the statement of the informant was recorded, wherein he has not even raised any suspicion regarding the death of the deceased. He specifically stated that he is not having any suspicion about the death of the deceased and therefore, merg was registered. He submitted that after five days, this story was concocted and the applicants are implicated falsely in the alleged offence merely because there was a dispute between the deceased and the applicant Durgeshwari. He submitted that even accepting the allegation as it is, on the face of it and after considering the suicide note by no stretch of imagination, it can be said that it is an abetment at the hands of the present applicants. He submitted that the suicide note only shows that the names of the present applicants are mentioned in that as far as the abetment

is concerned or the nature of the abetment is concerned, there is no whisper in the said suicide note. The statements of the various witnesses also nowhere discloses that there was any illicit relation between both the applicants and therefore, the deceased was fed up and committed suicide. On the contrary, the earlier statement of the informant itself shows that due to the dispute as the deceased was addicted to bad vices the applicant Durgeshwari started residing separately and thereafter the deceased has committed suicide. There is no single whisper that there was any illicit relations between the wife of the deceased and the another applicant. In view of that, he prays for the quashing of the FIR and entire charge sheet.

8. Learned APP for the State and learned counsel for the non-applicant No.2/complainant strongly opposed for the same and submitted that the recitals of the FIR and the statement of the witnesses specifically shows that due to the illicit relations between the wife of the deceased with the another applicant, the deceased was fed up and there was no alternative before him and therefore, he has committed suicide. In view of that, application deserves to be rejected.

9. Before entering into merits of the case, it has to be seen whether having the illicit relations between both the

applicants is sufficient to say that the applicants have abetted the deceased to commit the suicide.

10. Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the Indian Penal Code defines abetment of suicide, which reads thus:

306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Classification of offence. - The offence under this section cognizable, non-bailable, non-compoundable and triable by Court of Session.

11. Section 107 of the Indian Penal Code (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

107. Abetment of a thing. A person abets the doing of a thing, who—

First.—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.

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Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

12. Section 108 of the Indian Penal Code reads thus:

108. Abettor.—

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.— The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.— To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

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(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.— It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwelling-house, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(9)

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.— The abetment of an offence being an offence, the abetment of such an abetment is also as offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.— It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been

murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder.

13. Section 306 of the Indian Penal Code talks about abetment of suicide and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

The said Section penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 of the Indian Penal Code. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide.

14. A question arises as to when is a person said to have instigated another. The word "instigate" means to goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done. It is well settled that in order to amount to abetment, there must be *mens rea*. Without knowledge or intention, there cannot be any abetment. The knowledge and intention must relate to the act said to be

abetted which in this case, is the act of committing suicide. Therefore, in order to constitute abetment, there must be direct incitement to do culpable act.

15. In the case of **Kamlakar vs. State of Karnataka (Criminal Appeal No.1485/of 2011, decided on 12.10.2023)** wherein the Hon'ble Apex Court has explained ingredients of Section 306 of the Indian Penal Code (Section 108 of BNS) and held, as under:

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In **Ramesh Kumar vs. State of Chattisgarh, reported in AIR 2001 SC 383**, this Court has analysed different meanings of "instigation". The relevant para of the said judgment is reproduced herein:

"20. 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."

8.4. The essentials of Section 306 IPC were elucidated by this Court in **M.Mohan vs. State, AIR 2011 SC 1238**, as under:

"43. This Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367]** had an occasion to deal with this aspect of abetment. dictionary The Court dealt with the meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of selfesteem and selfrespect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 306 IPC were also discussed in **Amalendu Pal alias Jhantu vs. West bengal AIR 2010 SC 512**, in the following paragraphs:

"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 IPC is not sustainable.

13. 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."

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to

be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased.”

16. In the case of **Sanju @ Sanjay Singh Sengar v. State of M.P., reported in (2002) 5 SCC 371**, the Hon’ble Apex Court extensively dealt with concept of 'abetment' in the context of the offence punishable under Section 306 of the Indian Penal Code. In that case, the allegation against the accused/appellant therein was that he had abetted the commission of suicide of his sister's husband one Chander Bhushan. The facts reveals that there were matrimonial disputes between sister of the appellant/accused and her husband and in connection with the said disputes, the appellant had allegedly threatened and abused Chander Bhushan. Chander Bhushan committed suicide and the suicide was attributed by the prosecution to the quarrel that had taken place between the appellant and the said Chander Bhushan, a day prior. It was alleged that the appellant had used abusive language against said Chander Bhushan and had told him "to go and die". The appellant, who had been chargesheeted for an offence punishable under Section 306 of the Indian Penal Code, filed a

Petition under Section 482 of the Code of Criminal Procedure, for quashing the proceedings against him, but his Petition was dismissed by the High Court. While allowing the appeal, the Hon'ble Apex Court, inter alia, observed as follows:

"Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation."

17. Thus, a direct influence or an oblique impact with the acts or utterances of the accused caused or created in the mind of the deceased and which draw him to suicide will not be sufficient to constitute offence of abetment of suicide. A fetal impulse or ill-fated thoughts of the suicide, however unfortunate and touchy it may be, cannot fray the fabric of the provision contained in Section 306 of the Indian Penal Code. In order to bring out an offence under Section 306 of the Indian Penal Code or 108 of BNS specific abetment as contemplated by Section 108 of BNS on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for an offence under Section 306 of the Indian Penal Code.

18. The Hon'ble Apex Court in case of **Ramesh Kumar vs. State of Chhattisgarh**, reported in **AIR 2001 SC 383** referred in **Prabhu vs. The State represented by the Inspector of Police and anr. [SLP (Cri) Diary No.39981/2022, decided on 30.01.2024]** relied upon by the Apex Court has examined different meaning of 'instigation', which reads as under:

'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'.

19. Thus, combine reading of Sections 306, 107, and 108 of the Indian Penal Code, shows the requirement is a positive act on the part of the accused to instigate or aid in committing

suicide and in the absence of the same, the conviction cannot be sustained. There has to be a clear *mens rea* or intention to commit the offence for being held liable under Section 306 of Indian Penal Code.

20. After going through the catena of decisions, it reveals that test that the court should adopt in these types of cases is to make an endeavour to ascertain on the basis of the materials on record whether there is anything to indicate even prima facie that the accused intended the consequences of the act, i.e., suicide. To attract the provisions what is to be shown is that the accused have actually instigated or aided in the victim's act of committing suicide. There must be direct or indirect incitement to the commission of suicide and the accused must be shown to have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide.

21. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that there was a dispute between the husband and wife i.e. deceased and the applicant Durgeshwari and due to the said dispute, the applicant Durgeshwari was residing separately and deceased has committed suicide. The suicide note is reproduced as under:

मेरी मौत का कारण राहुल मनोहर
और मेरी औरत है

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मेरी औरत के सामने किराय के रूम
मे मारा औरत मेरी औरत ने कुछ
भी नहीं किया और
उसीने बुलाकर मारी

Even the suicide note if is taken into consideration which is reproduced as above, nowhere it reveals that what type of the abetment was at the hands of the present applicants and therefore, the deceased has not left with an alternative, but to commit suicide and therefore, he has committed suicide. Thus, considering the entire allegation levelled against the present applicants and specifically in the light of the fact that initially the informant has not lodged any report against anybody or there was no whisper as to the illicit relationship between the wife of the deceased and the other applicant, but five days of the incident, this new story is developed and thereafter the FIR came to be lodged, this aspect is also to be taken into consideration while consideration the application.

22. Applying the above principles to the facts of the present case and even accepting the case as it is, it reveals that there is no sufficient material to show that there was an instigation or abetment at the hands of the present applicants and therefore the deceased has not left with another option but to commit suicide and thereby he has committed suicide. On

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examination of the instant case on the touchstone of the principles laid down by the Hon'ble Apex Court, the exhaustive suicide note written by the deceased victim and the statements of the witnesses nowhere disclose that it is the abetment at the hands of the present applicants and due to which the deceased has committed suicide. In view of that, in absence of the prima facie case both the applications deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) Both applications are **allowed**.
- (ii) The FIR in connection with Crime No.91/2025 registered under Sections 108 and 3(5) of the Bharatiya Nyaya Sanhita, 2023, Police Station Mankapur, Nagpur District Nagpur and consequent proceeding arising out of the same bearing RCC No.3610/2025 pending before the 12th Civil Judge Junior Division and Judicial Magistrate First Class, Nagpur, are hereby quashed and set aside to the extent of the present applicants.

Both the applications are disposed of.

(URMILA JOSHI-PHALKE, J)