



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2620 OF 2023**

Nilima Shantaram Chavan ... Applicant
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.3382 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.2620 OF 2023

Samar Sudhir More ... Applicant/First informant
and
Nilima Shantaram Chavan ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. A.P.Mundargi, Sr. Advocate with Mr. Jayant Bardeskar, Ms. Pravada Raut i/by
Mr. Subir Sarkar, for Applicant.
Mr. R.M.Pethe, APP for State.
Mr. Sundeep Singh, for Intervener in IA 3382 of 2023.
Mr. Vishnu D. Kesarkar, PI, Kurla Railway Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 20 SEPTEMBER 2023

P.C.

1. This is an application for pre-arrest bail in connection with C.R.No.1389
of 2023 registered with Kurla (Mumbai Railway) Police Station for an offence
punishable under Section 306 of the Indian Penal Code.

2. Mr. Sudhir More (the deceased), the father of the first informant, was a
politician. On 31 August 2023 at about 10.30 p.m., the deceased received a call and

had conversation with a person in a loud tone. The deceased left his home. At about 11.30 p.m., the brother of the deceased called the deceased on his cellphone. The call was received by a police personnel and it was informed that the deceased met with an accident and was brought to Rajawadi Hospital. It transpired that the deceased died on the railway tracks at about 23.40 hours. The first informant lodged a report with the allegations that the applicant used to frequently call the deceased and harass him. Once, while the deceased was admitted in hospital, the deceased had informed the first informant to tell the applicant not to call him. The first informant alleged on account of the harassment and mental agony caused to the deceased by the applicant, the deceased died by suicide.

3. Apprehending arrest, the applicant, who is an Advocate and a member of a statutory body, approached the Court of Session. By an order dated 6 September 2023, the learned Additional Sessions Judge, Greater Mumbai, declined to exercise the discretion in favour of the applicant. Hence, this Application.

4. Mr. Mundargi, learned Senior Advocate for the Applicant would urge that the material, which has now been pressed into service against the applicant, is totally different from the version in the FIR, which is bereft of any particulars apart from a bald allegation that the applicant used to call and harass the deceased. Mr. Mundargi would urge that, as it now emerges, the applicant was in a relationship with the deceased since more than a couple of years. The deceased was also in a

relationship with another woman. This led to dispute between the applicant and the deceased. At best, the applicant can be accused of being possessive of the deceased. The fact that on the day of occurrence, the deceased had telephonic conversation with the applicant on numerous occasions, even if taken at par, according to Mr. Mundargi, would not justify a prima facie inference that the applicant abetted the commission of suicide. At any rate, the telephonic conversation is a matter of record as the prosecution has retrieved the transcript of the conversation, and, thus, the custodial interrogation of the applicant is not warranted.

5. In opposition to this, Mr. Pethe, learned APP, and Mr. Sundeep Singh, learned Counsel for the Applicant-Intervener resisted the prayer for pre-arrest bail.

6. Taking the Court through the transcript of the telephonic conversation which indicates that the applicant had made as many as 56 calls on the day of occurrence leading to the death of the deceased, Mr. Pethe would urge that there was a direct instigation to commit suicide.

7. The fact that the applicant and the deceased were in a relationship is, even at this nascent stage, appears to be rather incontrovertible. The allegations in the FIR and the statement of the lady with whom the deceased also had relationship, prima facie, indicate that the applicant was pestering the deceased over the said relationship with another lady. The statement of that lady indicates that on the day of occurrence at about 6.00 p.m., the deceased had informed her about the alleged

harassment at the hands of the applicant and even shared the messages sent by the applicant.

8. The transcript of the telephonic conversation between the applicant and the deceased indicates that, on the day of occurrence, there were extended conversations between the applicant and the deceased. The Applicant has made more than 50 calls. The deceased left home and proceeded towards the railway track. There were calls between the applicant and the deceased moment before the alleged occurrence.

9. In the backdrop of the aforesaid material on record, whether there is a prima facie case for an offence punishable under Section 306 of the IPC deserves to be appreciated. It is trite, in order to make out an offence punishable under Section 306 of IPC, there ought to be abetment as contemplated by Section 107 of the IPC on the part of the accused with an intent to bring out the suicide of the deceased as a result of that abetment. Intention on the part of the accused to aid or to instigate or abet the deceased to commit suicide is the linchpin of the offence punishable under Section 306 of IPC.

10. A useful reference in this context can be made to a decision of the Supreme Court in the case of **Ude Singh and Ors. V/s. State of Haryana**¹ wherein after adverting to the previous pronouncements, the Supreme Court enunciated the

1 (2019) 17 SCC 301

legal position as under :

“15. Thus, “abetment” involves a mental process of instigating a person in doing something. A person abets the doing of a thing when :

- (i) he instigates any person to do that thing; or
- (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or
- (iii) he intentionally aids, by acts or illegal omission, the doing of that thing.

These are essential to complete the abetment as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person

to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.” (emphasis supplied)

11. On the aforesaid touchstone, reverting to the facts of the case, prima facie, the instigation attributed to the applicant is both proximate and direct. The applicant continued to call, abuse, humiliate and harass the deceased even moments before the deceased threw himself on the railway tracks. On more than one occasions, in the transcript of the conversation, the deceased appeared to have implored to spare his life by ceasing and desisting from the continuous course of harassment, to which he had been subjected to. It is true in the said transcript, the Applicant also threatened to put an end to her life. However, if the transcript of the conversation is appreciated as a whole, prima facie, one gets an impression that the applicant continued to instigate the deceased despite the deceased having disclosed the fact that he was on the way to the railway tracks.

12. The alleged harassment and the humiliation to which the deceased referred to in the transcript is required to be appreciated in the light of the situation in life of the parties. The deceased was working in political arena; where public image matters. Prima facie, the Applicant, appears to have pursued a continuous course of alleged harassment and humiliation. Conversely, in the light of the situation in life of the applicant, it cannot be said that the applicant could not perceive the consequence of the acts and conduct she was pursuing. Upto the last moment, the applicant, prima facie, seems to have continued with the abuses, irritation and annoyance to the applicant. I am, therefore, inclined to hold that there are, prima facie, both direct and

proximate acts of instigation.

13. The prosecution alleges that the applicant has deleted the whatsapp conversation between the applicant and the deceased. Recovery of the mobile phone handset is necessary for an effective investigation. The custodial interrogation of the applicant would also throw light on the attendant circumstances and motive.

14. For the foregoing reasons, I am not inclined to exercise the discretion in favour of the applicant.

14. Hence, the following order :

ORDER

- (i) The application stands rejected.
- (ii) It is clarified that these prima facie observations are confined to determine the entitlement to pre-arrest bail only.
- (iii) Interim Application No.3382 of 2023 also stands disposed.

(N.J.JAMADAR, J.)