

Bombay High Court

Abhay Ramchandra Kulkarni vs The State Of Maharashtra on 1 September, 2021

Bench: Bharati Dangre

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.208 OF 2021

Applicant Abhay Ramchandra Kulkarni ..

Vs.

Respondent The State of Maharashtra
[Through Sahakarnagar Police Station.] ..

Alisha Pinto,
& Brief Mr. Nilesh Tribhuvann, Mr. Burzin Bharucha, Ms
Mr. Shreedhar Lad, Mr. Jehan Fulwadiwala i/b Whit
Advocates & Solicitors for the Applicant.
Mr. A.R. Kapadnis, A.P.P. for the State.
...

CORAM : SMT. BHARATI DANGRE, J.

2021. DATED : 01ST SEPTEMBER

ORDER:-

1. The Applicant, who is facing charge under [Sections 306, 504](#) and [507](#) of the IPC along with Section 39 of the Maharashtra Money Lending Act, has filed the present Application, seeking his release on bail claiming his wrongful indictment. He came to be arrested on 18/04/2019.

2. An Interim Application No.1449 of 2021 was filed by him, AJN 2/17 00-BA-208.21.odt where he sought his release on temporary bail on the outbreak of Covid-19 pandemic. In the wake of the directions issued by the Apex Court in Suo Motu Writ Petition (C) No.1 of 2020, by order dated 11/06/2021, he came to be released on temporary bail for a period of 45 days, from date of his actual release. Since the period was to come to an end, extension of order was sought and the matter was directed to be listed on 23/08/2021 on assuring the presence of the Applicant.

3. I have heard learned counsel for the Applicant in his presence in the Court and the learned A.P.P. appearing for the State.

4. On 18/04/2019, wife of the deceased reported to Sahakarnagar Police Station, Pune City, in reference to the AD Registered No.37 of 2019. She stated that her husband was engaged in legal practice in Pune city and was running the said profession from his establishment at Dhanakwadi, Pune. Her husband was owner of 22 acres of land, which was his ancestral property and with his brother, who was employed in a real estate company, the two were collectively involved in sale and purchase of land. In the year 2013, they had purchased a land admeasuring 28 acres and 20 gunthas, but the said land was in dispute and for development of the said land, it is informed by the Complainant that her husband had borrowed money from friends.

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5. As per the Complainant, in the year 2018, her husband was acquainted with the present Applicant and he informed her that for development of the agricultural land, he had borrowed an amount of Rs.67 lakhs from him with a compounding interest levied at 4% per month and till date, he had repaid an amount of Rs.56,00,000/- towards interest.

6. The accusation faced by the Applicant is to the effect that he was harassing the deceased by making phone calls and forwarding messages whenever there was a delay in remittance of loan amount and this was causing him tremendous mental pressure. She was also informed that the Applicant had warned him that till the entire amount is not repaid, he should make phone call every day or personally meet him and it is alleged that the Applicant used to constantly message him and on reading the said messages, her husband used to feel depressed. In April, 2018, the Applicant visited their house and in a dictatorial tone, forced them to sign an agreement of loan, otherwise she was threatened of losing her job. She also referred to another incident when the Applicant has alleged to have visited their house when she and her daughter were present and, he threatened that if the money taken on loan is not repaid, they will have to meet dire consequences. On 22/09/2018, it is alleged that she received a call from the Applicant, where he abused her in filthy language. In the year 2019, without specifying any AJN 4/17 00-BA-208.21.odt date, her husband informed her that the Applicant had visited him and had insulted him in public view. By referring to the visit of their family to their village of origin on 03/03/2019, the Complainant states that in order to repay the loan due to the Applicant, a methodology was worked out and, accordingly, assurance was given to the Applicant. On 01/04/2019, her husband hanged

himself to the ceiling fan in the office and the last rites were performed. She tendered a note scribed by her husband in his own handwriting and on reading the same, she alleges that on account of stress and harassment faced by him, for repayment of loan by the Applicant and on account of the ignominy faced by him in public, he has committed suicide.

7. The above allegations prompted the Investigating Agency to invoke [Section 306](#) of the IPC and the investigation was set rolling. The note scribed by the deceased in his own handwriting signed on 01/04/2019 forms the fulcrum of the investigation. Apart from this, several WhatsApp messages are compiled in the process of investigation. The statements of several witnesses are also recorded to support the case of the prosecution that on account of the instigation at the instance of the Applicant and being unable to bare the humiliation and insult, the deceased Yuvaraj Nanavare committed suicide. The postmortem report opined the cause of death due to asphyxia due to hanging.

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8. Learned A.P.P. has placed reliance on the material compiled in the charge-sheet.

9. On a careful reading of the note, which is alleged to be in the handwriting of the deceased, it appears that he is a victim of unfavourable circumstances and the detail note speak of the web of adverse circumstances, from which, he was unable to rescue himself. Referring to his business of development of the ancestral land, the deceased narrated that the money was invested by his family for construction of a pipeline since the area is deficit in rain. Construction of farm pond, rearing of cattle incurred huge expenses and the entire money was spent for the said purposes. The deceased speak of a loan taken from Union Bank, Karmala Branch, which was also spent. Thereafter, money was borrowed from some individuals free of interest. He also borrowed money through Bhishi and completed the work. In 2014, an amount of Rs.5 lakhs was borrowed from one person in Dhanakwadi, which carried interest of 6.5% per month. Another amount is borrowed from some person, which was with a condition of penalty. The deceased also mentioned of a GPS Society established with object of financial benefit, but this attempt also failed since within one year, it resulted in a loss of 5 to 6 lakhs.

10. The acquaintance of the deceased with the Applicant find mention in the note and since he was in need of money, he AJN 6/17 00-BA-208.21.odt demanded money from the Applicant and in the month of February, 2016, he was given a hand loan of Rs.25 lakhs, of which Rs.5 lakhs was repaid. A promissory note along with a cheque by way of security was given to the Applicant is also mentioned. Further, an amount of Rs.15 lakhs was borrowed in March, 2016. But, at this time, the interest was levied at 4% per month and this was agreed by reducing the terms in writing. This entailed him with interest of Rs.1,60,000/- per month, which was being paid. Another amount of Rs.20 lakhs was borrowed in May, 2016 with an interest at the agreed rate. However, soon the deceased realized that the interest had mounted to huge whopping sum of Rs.2 lakhs per month, which became too taxing since there was no income to the deceased.

In July, 2016, again an amount of Rs.7 lakhs was borrowed with 4% interest. The note gives the details about how he suffered during demonetization and was unable to get money from the market, which landed him in a soup and he was unable to pay and there was delay in payment of interest. For payment of interest, he borrowed an amount of Rs.12,50,000/- from another person with interest at the rate of 3% to 4.5% per month. Attempts made by the deceased to repay the amount of interest are highlighted in great detail. The situation became precarious when a deal, which was almost finalized, came to be cancelled subsequent to demonetization. The Applicant was demanding his money since he was to give money to his sister. Money was again borrowed from one Sandip Kale and to meet the AJN 7/17 00-BA-208.21.odt requirements, again an amount was borrowed with interest at 10% from one Sagar and this is how the deceased got embroiled in paying the interest. In the note, the deceased expressed his feelings in following words - "From the last 2-3 years, I am extremely exhausted being unable to pay the amount due, borrowing the amounts from someone and paying it by way of interest to some one. For satisfying the said demand, again borrowing the sum from other persons and the cycle is going on. My value in the market has gone down. It has created tremendous mental pressure. I am unable to focus on my profession or agricultural activities. Constantly, I keep on thinking of interest, penalty, Money and Money ..."

11. In the note, the deceased had, step by step, dealt with the different amounts which he had borrowed and it also contains reference of an incident about the Applicant visiting his place and insisting for repayment of amounts and the agreement, which was signed by him and his wife in the month of April, 2018. He also mentions about visit of the Applicant along with his wife to his house, where the Applicant is attributed motive and expressed his own financial difficulties and the difficulties at his home front since his father had left the house and had threatened that he is likely to commit suicide. The feeble attempts by the deceased to repay the amount to the Applicant are narrated in the said note.

Now the deceased blame his lenders and alleges that it was AJN 8/17 00-BA-208.21.odt not proper on their part to advance loans at high rate of interest and put the blame on them for taking advantage of his helplessness.

12. The note, when carefully perused, reflects a narration of the helpless and forlorn of a person, who is embroiled in financial distress and is not able to come out of it.

In support of the case of the prosecution, the WhatsApp chats are also referred to. This is again a reflection of the despair and frustration of the Applicant, who kept on reminding the deceased about the amounts advanced to him and about their repayments. The chats placed on record contain messages of March, 2017, May, 2017, June, 2017, July, 2017, 06/02/2018 and April, 2018. The chat reveal communication from the Applicant to the deceased about the difficulties he has been facing being left with no amount in his hand, to manage the affairs of his own family. At times, he being rattled, make serious allegations that the deceased has no intention to repay the money.

13. The statements of various witnesses are compiled in the charge-sheet which include the statement of his nephew one Satyajit Kadam, who also makes reference to the transactions of his uncle with the Applicant between the years 2016 and 2018 and the repeated demands at the instance of the Applicant. The statement of one Kalyan Adke, who was sharing the office with the deceased is also recorded, who states that he

was known to AJN 9/17 00-BA-208.21.odt the deceased for a long and in the year 2016, he was informed by the deceased that for the farm pond and the dairy business, he had borrowed huge amounts from his friends, but during demonetization, the deceased suffered huge loss and he was unable to repay the amount and he was buying time to repay the same. He had also offered to sell one of his lands in the village but the deal was not struck and he was under tremendous tension to repay the amounts and used to remain under pressure.

Another statement compiled in the charge-sheet is of his brother Gahininath Nanavare, who also narrates the financial distress of his brother and speak about the messages received by his brother from the Applicant, where he was demanding an amount of Rs.1,10,20,000/-, which was not responded by him. He alleges that being harassed by the Applicant, his brother had committed suicide. The screen shots of the messages sent to Gahininath Nanavare are produced by him.

14. Another statement of one Nikhil Dhupde from whom, the deceased had borrowed money is also placed on record. One Abhijit Maral also speaks of demand of Rs.1,10,20,000/- at the instance of the Applicant and it is alleged by the said witness that the said demand mounted pressure on the deceased and that is why he committed suicide.

15. Certain messages forwarded by the Applicant on the sad demise of his friend Yuvaraj Nanavare are also placed on record, AJN 10/17 00-BA-208.21.odt where he disapproved of the extreme step taken by him and described the incident as shocking. He offer his condolences and expresses that he has lost his dear friend and that it is difficult for him to accept his death.

16. In the wake of the material mentioned above, the submission of the learned A.P.P. is that it is the Applicant, who has abetted the suicide, as repeatedly he was being harassed for refund of the amount. He submits that since the Applicant had charged exorbitant rate of interest, the deceased was under pressure to repay the amount and unable to bear the ignominy, has committed suicide. He is alleged to have abetted the commission of the suicide by the deceased by intentionally instigating him to do so.

17. The principal question, which would warrant attention is whether the Applicant could have said to have abetted the commission of suicide by the deceased Yuvaraj Nanavare. It would be apposite to refer to the definition of the term 'abetment' as set out in [Section 107](#) of the IPC.

"107. Abetment of a thing - A person abets the doing of a thing, who - (i) - Instigates any person to do that thing; or (ii) 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 (iii) Intentionally aids, AJN 11/17 00-BA-208.21.odt by any act or illegal omission, the doing of that thing."

18. In [Ramesh Kumar v. State of Chhattisgarh](#) reported in (2001) 9 SCC 618, the term 'instigation' is elaborated in the following words by the Hon'ble Apex Court:

"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."

19. In case of [Arnab Manoranjan Goswami v. State of Maharashtra](#) reported in (2021) 2 SCC 427, the Hon'ble Apex Court reiterated the position of law as regards the offence under [Section 306](#) of the IPC and after referring to the catena of decisions, the following observations are made:

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"Dealing with the provisions of [Section 306](#) of the IPC and the meaning of abetment within the meaning of [Section 107](#), the Court observed:

"12. In order to bring out an offence under [Section 306](#) IPC specific abetment as contemplated by [Section 107](#) IPC 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 this particular offence under [Section 306](#) IPC. We are of the clear opinion that there is no question of there being any material for offence under [Section 306](#) IPC either in the FIR or in the so-called suicide note."

The Court noted that the suicide note expressed a state of anguish of the deceased and "cannot be depicted as expressing anything intentional on the part of the accused that the deceased might commit suicide".

50. More recently in [M Arjunan vs State](#) (represented by its Inspector of Police) reported in (2019) 3 SCC 315, a two judge Bench of this Court, speaking through Justice R. Banumathi, elucidated the essential ingredients of the offence under [Section 306](#) of the IPC in the following observations:

AJN 13/17 00-BA-208.21.odt "7. The essential ingredients of the offence under [Section 306](#) IPC are:

(i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide.

The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide.

There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of

instigation/abetment to commit suicide are satisfied the accused cannot be convicted under [Section 306 IPC](#)."

20. In another recent decision in [Gurjit Singh v. State of Punjab](#) reported in (2020) 14 SCC 264, the Apex Court had made the following observations:

"35. The prosecution has not been in a position to place on record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was a cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit the suicide. We are of the view, that there is no material placed on record to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising presumption.

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36. It could further be seen from the evidence on record that the time gap between the last visit of the deceased to her parents with regard to the illegal demand and the date of commission of suicide is about two months. As such, there is nothing on record to show that there was a proximate nexus between the commission of suicide and the illegal demand made by the appellant. In the case of [Sanju Alias Sanjay Singh Sengar vs. State of M.P.](#)¹¹ this Court found that there was time gap of 48 hours between the accused telling the deceased 'to go and die' and the deceased 'committing suicide'. As such, this Court held that there was no material to establish that the accused had abetted the suicide committed by the deceased."

21. In another order passed by the Hon'ble Apex Court on 26/07/2021 in the case of [Shabbir Hussain v. The State of Madhya Pradesh & Ors.](#) (Special Leave to Appeal (Crl. No. 7284 of 2017), the following observations are relevant:

"In order to bring a case within the provision 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 instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide [AJN 15/17 00-BA-208.21.odt](#) would not amount to an offence under [Section 306 IPC](#) [[Amalendu Pal v. State of West Bengal](#) (2010) 1 SCC 707.] Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [[Chitresh Kumar Chopra v. State \(Government of NCT of Delhi\)](#) (2009) 16 SCC 605.]"

22. In the wake of the position of law emanating from the aforesaid authoritative pronouncements, the material compiled in the charge-sheet, prima facie falls short of any abetment at the instance of the present Applicant. The WhatsApp messages compiled in the charge-sheet, when carefully read, pertain to the period from 2017 to April, 2018 whereas, the deceased took the extreme step in the month of April, 2019. The perusal of the FIR would disclose that the occurrence of offence has been spread

over for a period from 01/02/2016 to 01/04/2019. The immediate provocation or instigation as alleged is not reflected in the charge-sheet. Referring to the suicide note, which is alleged to have been scribed by the deceased immediately prior to the death, is nothing but a reflection of the unfortunate vicious cycle in which the deceased found himself since he borrowed money from several persons and unable to withstand the pressure, he decided to chose his own way of bidding good bye to them, as well as to the entire world. The act on the part of the AJN 16/17 00-BA-208.21.odt Applicant in demanding the money back and the money involved being a huge sum advanced to the deceased since 2016, which remain unpaid, cannot be said to be an act of harassment as merely demanding the money advanced can, by no stretch of imagination, be said to have intimidated or provoked the deceased since he was conscious of the fact that he has borrowed the money as a loan and it is due for its return. All his attempts to settle the different borrowers, the Applicant being one of them, proved to be unsuccessful and on loosing hope that the things can be put in order, he took away his life, for which the Applicant, prima facie, cannot be held responsible.

The Applicant is, therefore, entitled to be released on bail particularly, when the investigation is now complete and the charge-sheet is already instituted and he is in custody since 18/04/2019. Needless to state that the observations made above are prima facie in nature and only restricted to the decision of the bail application. Hence, the following order:

:ORDER:

(a) The Applicant - Abhay Ramchandra Kulkarni, shall be released on bail in C.R. No.298 of 2019 registered with Sahakarnagar Police Station, District Pune on executing P.R. bond to the extent of Rs.50,000/- and furnishing one or two sureties of the like amount.

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(b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.

(c) The Applicant shall mark his appearance in the Sessions Court once in every month.

23. The Application is allowed in the aforestated terms.

24. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.] AJN