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ABA (ST)-3124-2020
21.10.2020

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION (ST) NO.
3124 OF 2020**

Ashokbhai Surji GangarApplicant

V/s.

The State of MaharashtraRespondent

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Mr. Subodh Desai a/w. Mr. Kartik Garg and
Ms. Uma Sharma, Advocate for the
applicant.

Mr. Yogesh Dabke, APP for State.

CORAM : SANDEEP K. SHINDE, J.

Wednesday, 21st October, 2020.

P.C . :

1. Heard learned Counsel for the
applicant and learned APP for State.

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2. Apprehending arrest in connection with Crime No.I-178/2020 registered at Badlapur (East) Police Station, for the offences punishable under Sections 306, 504 of the Indian Penal Code, the applicant is seeking pre-arrest bail.

3. The learned Additional Sessions Judge, Kalyan had granted interim pre-arrest bail to the applicant. However, after hearing the prosecution, bail application was rejected on 8th October, 2020. I have perused the order. It appears, the applicant was not available at the given address, when the State attempted to serve the notice. This is one of the reasons for declining pre-arrest bail to the applicant. Another reason is that, cell phone of the applicant allegedly, containing the text

messages exchanged by and between the wife of the deceased and the applicant are to be recovered.

4. I have perused the FIR dated 15th September, 2020 lodged by the father of the deceased. Deceased, son of the complainant, had committed suicide on 3rd September, 2020. At the relevant time, he was 45 year old. Deceased's wife and daughter are accused nos.1 and 2. It is alleged that, the applicant is a paramour of wife of deceased. The deceased has left behind a, suicide note, and alleged the extra-marital relations of his wife with the present applicant. The applicant is an Architect by profession and he is 46 years old.

3. In the case of **M. Mohan V/s. The State, represented by the Deputy**

Superintendent of Police (2011) 3 SCC 626, while dealing with abatement, the Apex Court has observed thus :

“Abatement 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.”

4. Keeping in mind, the ratio laid down by the Apex Court in the context of the facts of the case, a fact cannot be ignored that the applicant and accused no.1, both are matured persons, in the age group of 40-45 years. Thus, alleged relationship (extra-marital) prima-facie, cannot be construed as a ‘Positive

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Act' to infer that the applicant either instigated and/or aided the deceased in committing suicide. It may also be stated that, wife and daughter of the deceased were arrested and released on bail. So far as the recovery of text messages is concerned, in my view, applicant can be directed to handover cell phone to the Investigating Officer and directed accordingly. Thus taking into consideration the facts, a case is made out for granting interim relief to the applicant. Thus, the following order :

ORDER

(i). In the event of arrest of the applicant in Crime No. I-178/2020 registered with Badlapur (East) Police Station, he shall be released on furnishing P.R. Bond for the sum of

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Rs.25,000/- (Rs. Twenty Five Thousand only) with one or more sureties in the like sum.

6. He shall report to the Investigating Officer on 23rd, 27th and 29th October, 2020 between 11:00 to 2:00 p.m. and co-operate in the investigation.

7. He is further directed to furnish particulars of his correct address and contact details to the Investigating Officer.

8. Stand over to 4th November, 2020 for further consideration. On this date, the prosecution shall place before the Court, the case diary for perusal.

(SANDEEP K. SHINDE, J.)