

Order below Exh.01 in Cri.B.A.No.1286/2022

CNR No.MHNS010054212022

(Suhasini Satish Deshmukh vs. State)

The applicant has preferred this application for anticipatory bail praying therein that she may be released on bail in the event of arrest in connection with CR.No.I-163/2022 registered with Mhasrul police station initially for attempt to commit murder of Satish Deshmukh and after his death, for the offence punishable under Sec.302 r/w 34 of IPC, on the basis of FIR lodged by Parikshit Satish Deshmukh.

2. Bail application is filed on the ground that the applicant is innocent and has been falsely implicated in the case. That informant is not eye witness, lodged FIR on the basis of hear-say information and message by deceased on mobile. That Sec.302 of IPC is not attracted. There is delay in lodging FIR. The fact that deceased was admitted in Sahyadri hospital, is not mentioned in FIR. Suyog hospital and Sahyadri hospital informed about the incident to Mhasrul police station on 10.9.2022 and 11.9.2022 and police recorded statements of witnesses on 10.9.2022 and 11.9.2022 and of applicant on 21.09.2022, but not arrested the applicant. Deceased called applicant and Arun Kandekar to the hospital, made allegations about their illicit relations, assaulted Arun Kandekar for which Kandekar has lodged N.C. to Mhasrul police station. That false FIR is lodged against applicant. Nothing is to be recovered or discovered at the instance of applicant. That she will co-operate investigation machinery and will not pressurize

witnesses. On these main grounds and others has prayed for bail.

3. Notice was issued to State. State appeared through Ld. APP Mr. Kapse and filed say resisting for grant of application on the grounds that the offence is serious one. Both the accused persons in furtherance of their common intention committed murder. That deceased sent message on family group stating that if he dies, Rinku and Kandekar who administered him injection, would be held responsible. That there was dispute between Satish Deshmukh and accused on the count of illicit relation between the accused person. The applicant has lodged N.C. against Satish Deshmukh. That Shreya daughter of Suhasini, forcibly took the mobile of Satish Deshmukh and has deleted important whatsapp conversation. That the applicant will abscond, if released on bail. That he will pressurize the witness. On these main grounds and others have prayed for rejection of the bail application.

4. Ld.Adv.Mr.Borade filed his Vakalatnama on behalf of informant. He filed his objections [Exh.10]. He reiterated contents of FIR. According to him, there is prima facie case against both accused person for having caused death of Satish Deshmukh. That there are oral dying declarations pointing out finger of involvement of both the accused persons in the crime. That father of the informant was in critical condition and therefore, delay of 32 days cannot be said to be fatal. Hence, he prayed for rejection of the bail application.

5. Heard Ld. Advocate Mr.Mane for applicant. Perused bail application. Heard Ld. APP Mr.Kapse assisted by Ld.Adv. Mr.Borade. Perused police papers and say filed by Mhasrul police station.

6. Advocate Mr. Mane reiterated all the grounds mentioned in the bail application, whereas Ld.APP Mr.Kapse reiterated the grounds mentioned in the say filed by Mhasrul police station as well as contentions in written objections placed on record by Ld.Adv.Mr.Borade.

7. The informant is son of Satish Deshmukh [deceased]. Suhasini is second wife of Satish Deshmukh. Arun Kandekar is husband of Suhasini's sister.

8. According to FIR, on 10.9.2022, the informant while proceeding to Mumbai, received whatsapp message on 'We are family group' that “मला रिकु आणि कांडेकरने इंजेक्शन दिले आहे, मला मारण्यासाठी. मी मेलो तर ते जबाबदार आहेत”. Accordingly, the informant contacted his father who informed him that Rinku and Kandekar has given him injection. His father was not able to speak properly. Therefore, informant contacted the staff who shifted his father to Suyog hospital. During spot panchanama dated 11.9.2022 carried out in inquiry, Profol injection, Vecuronium bromide injection, Sodium chloride injection, Syringe, Two syringe without needle and Two plastic cover cap were found, seized and sealed. On 24.9.2022, FIR alleging attempt to murder was lodged. Dr.Deshmukh died on 13.10.2012 and offence under Sec.302 of IPC was added.

9. If the contents of FIR is to be believed, then there are two dying declarations, one in writing in form of whatsapp message and another is in form of conversation between Dr. Satish Deshmukh and informant revealing the administration of injection by both the accused persons. The investigation papers will reveal collection of whatsapp message dated 10th September 2022 at 2.59 p.m. stating “मला रिकु आणि कांडेकरने इंजेक्शन दिले आहे, मला मारण्यासाठी. मी मेलो तर ते जबाबदार आहेत”

10. Ld.Adv.Mr.Mane had argued vehemently that this is case of suicide and not attempt to murder or murder. He relied upon admission papers of Sahyadri hospital. Furthermore, to buttress his arguments, placed reliance on **Harihar Chaitanya vs. State of U.P. reported in 1989 C.J. [ALL] 105, Mahendra Singh Gayatribai vs. State of Madhya Pradesh reported in 1995 CJ (SC) 579, Savitri Agarwal vs. State of Maharashtra reported in 2009 CJ (SC) 1399, Mahipati Bapu Bandgar vs. State of Maharashtra reported in 2001 CJ (Bom) 481 and Vivek Mangoli v. Vijay Chowgule reported in 2022 (2) ABR (Cri) 682.**

11. If the FIR is to be considered, then definitely, Satish Deshmukh [deceased] had informed his son about criminal overt act of both accused persons, amounting to attempt to murder.

12. On perusal of admission papers with Suyog hospital, the same is dated 10.9.2022 and timing is mentioned as 15:46:19. It mentions self injected drug over dose. So also, is the case with

admission papers of Sahyadri hospital, which mentions about attempt of suicide by Dr.Satish Deshmukh.

13. However, the message given to the son by the father on 10.9.2022 at 2.59 p.m., stating criminal overt act is first in time. The another factor to be considered is that there is material on record to show that before administration of injection, there was quarrel between Dr.Satish Deshmukh on one hand and Suhasini, Kandekar on the other. Satish Deshmukh assaulted Khandekar for which he lodged N.C. against Dr.Deshmukh.

14. It also needs to be appreciated that staff of Parikshit hospital had admitted Dr.Satish Deshmukh in the hospital who at that point of time was not in a position to talk. The staff of Parikshit hospital was more concerned with availing of medical treatment for Dr.Deshmukh. Therefore, at the time of admission, the staff may have disclosed the reason of attempt to suicide.

15. The conduct of both the accused will show that after Dr.Deshmukh was admitted in hospital, both accused persons did not personally come to visit him, in stead, sent Shreya, daughter of Suhasini, who forcibly took the mobile of Dr.Deshmukh and erased some messages from his mobile.

16. The offence of murder is serious one. The name of the present applicant as well as criminal overt act is mentioned in FIR. The offence of murder is punishable with imprisonment for life or death. Custodial interrogation is necessary. It is specifically

mentioned in FIR that after marriage between Dr.Deshmukh and Suhasini, she took all the reins of the hospital in her hand. There are allegations that Suhasini and Kandekar are having illicit relations. Definitely, if the applicant released on anticipatory bail, witnesses will be pressurized.

17. As far as contentions of Ld.Advocate that this is case under Sec.306 of IPC is concerned, as discussed here in above, at the first point of time, criminal overt act of both the applicant is mentioned in whatsapp message. Even otherwise, this being stage of anticipatory bail, one cannot come to the conclusion that this is a case under Sec.306 of IPC, moreso when, the deceased had revealed the circumstances of his death to his son, pointing out the finger of guilt against both the accused persons.

18. As far as citation relied upon by Ld. Advocate Mr.Mane is concerned, firstly after going through **Harihar's** case, there cannot be second opinion that Magistrate has all the powers to disagree with the opinion of the Investigating Officer and take necessary steps. In the instant case, as pointed herein above in form of written and oral dying declaration, the deceased has communicated probable cause of his death to his son, subsequently, he died because of the anaesthesia injection. Prima facie offence under Sec.302 of IPC is made out. Therefore, the ratio laid down in **Harihar's** case cannot be taken into consideration. As far as other citations Gayatribai, Savitri Agarwal are concerned, all these observations made therein are after conclusion of trial of offences under Sec.306, 498A of IPC etc., therefore, the ratio laid down

therein cannot be applicable while disposing of anticipatory bail. So also, In **Bandgar's** case, there was no evidence to show active participation in the alleged act of committing murder. The only material was that the applicant was absconded which is not a fact, in the case in hands. Thus, citation relied upon by Ld. Adv.Mr.Mane are not helpful to him.

19. Hence, it will not be appropriate to exercise discretion in favour of the applicant in form of anticipatory bail. Hence, following order is passed :

ORDER

(1). Application is rejected.

Nashik.

Date : 08.11.2022

(V. P. Desai)

Additional Sessions Judge,
Nashik.