

**(2024) 11 BOM CK 0026****Bombay High Court****Case No:** Criminal Bail Application No. 278 Of 2024

Ms. Sushmita Lalchand Yadav

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

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**Date of Decision:** Nov. 26, 2024**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 164, 397, 401
- Indian Penal Code, 1860 - Section 107, 306

**Hon'ble Judges:** Milind N. Jadhav, J**Bench:** Single Bench**Advocate:** Anjani Kumar Singh, Shilpa Prashant Gaikwad, Sangita Phad**Final Decision:** Allowed

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**Judgement**

Milind N. Jadhav, J

1. Revision Applicant is challenging the order dated 24.04.2024 passed below Exhibit "12" in Session Case No. 88 of 2022 by the Assistant Sessions Judge, Panvel – Raigad (for short "Trial Court"). Applicant is the accused. Trial Court has rejected the discharge Application of Applicant seeking discharge from the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short "IPC"). Hence, the present Criminal Revision Application (for short "CRA") under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 (for short "Cr.PC").

2. Before I advert to the submissions made by the learned Advocates, the following facts of the case are summarised for consideration:-

2.1. Applicant and deceased became acquainted with each other for the first time in the year 2018 and subsequently developed affection. Applicant was unknown of the fact

that deceased was married. Deceased committed suicide on 27.02.2021 by hanging. He was 28 years old then. At that time, Applicant was 21 years old. Deceased married first informant / complainant – his wife on 11.05.2013 and they were blessed with a girl child called Jeevika in the year 2019. First Information Report (for short “FIR”) was lodged by wife on 22.03.2021. Applicant is accused of abetment to commit suicide by deceased and is charged under Section 306 IPC.

2.2. Applicant and deceased met on social media (Instagram) sometime in June, 2018 and their friendship blossomed into an extra-marital affair. Due to the changed behaviour of deceased which his wife discovered sometime in August, 2018. She also informed the family members when she learnt about the same.

2.3. In February 2019, his wife alongwith her father-in-law, mother-in-law, and one of his friends visited the house of Applicant and informed her and her family about their marriage and child. As per prosecution case, from February 2019 to December 2020, Applicant did not keep any contact with deceased.

2.4. In December, 2020 deceased contacted Applicant by meeting her below her office and attempted to reconcile with her which was once again discovered by his wife.

2.5. According to the first-informant, on 26.01.2021, deceased returned back from Goa trip and informed her that Applicant was insisting on marriage and asked him to leave his wife and daughter and threatened to publicly share their private photographs and videos if he failed to do so. On 21.02.2021, informant – wife left for Jodhpur to attend a family function.

2.6. On 27.02.2021, deceased committed suicide at 01:30 p.m. by hanging to the ceiling fan in his bedroom in his house at Panvel. His cook discovered deceased hanging from the ceiling fan and with the help of his mother and manager took him to Gune Hospital, Panvel, where he was declared brought dead. No suicide note is found. Post mortem report record no signs of injuries on the body of deceased. Cause of death is noted to be ‘due to hanging’.

2.7. On the same day at around 03:00 p.m., his wife was informed about deceased’s suicide by her sister-in-law. On 28.02.2021, she returned back from Jodhpur to perform the last rites of deceased.

2.8. On 22.03.2021, 23 days later, FIR No.62 of 2021 was lodged by wife of deceased against Applicant for the offence under Section 306 IPC, alleging that her deceased – husband committed suicide due to harassment and mental torture by Applicant’s constant pressure to marry her and provide money to her.

2.9. It is alleged in the FIR that the deceased took 15 tola gold ornaments from the first informant which he pledged with Federal Bank against which he received a gold loan of

Rs.3,75,000/- which was paid to Applicant. It is further alleged that deceased took multiple loans on his credit cards and paid the said money to Applicant due to Applicant's threat to publicly share their private photographs and videos, if he failed to marry her. It is alleged that on the date of incident Applicant made multiple phone calls to deceased after the suicide and had exchanged whatsapp conversations right until the time of him committing suicide. Whatsapp conversation is heavily relied upon by complainant and prosecution to prima facie establish that right until the act of committing suicide i.e. until 01:30 p.m., Applicant and deceased were chatting with each other and furthermore if the said whatsapp conversation is read, it would reveal that the act of committing suicide was a direct result of Applicant's conversation and chatting with deceased.

2.10. During investigation, police recorded statements of first informant-wife of deceased, his father and mother as also cook, who first discovered the body, his brother, his manager, and electrician. One

of the circumstances alleged is that on the date of incident i.e. on 27.02.2021, Applicant called on the mobile number of deceased multiple times after 01:30 p.m. and when she failed to receive any answer, it is the Applicant herself who called on the phone number of his Manager, who did not receive her call and thereafter called the cook, Mr. Arjun, working in deceased's house and asked him to check on the deceased.

2.11. Statement of the manager of deceased was recorded which noted identical facts as narrated by the cook in his statement. It is stated in the statement of the manager that on 27.02.2021, Applicant called on his phone number since the deceased was not receiving and acknowledging her phone calls after 1:30 p.m. Statement of the electrician records that on the following day i.e. on 28.02.2021, Applicant called on his phone number and demanded Rs.1.5 lakhs which were given to him by the deceased to be handed over to her.

2.12. In defence – Applicant's case is that the relationship between deceased and his wife was strained and in turmoil. Consequently, resulting in the deceased becoming emotionally aggressive and hypersensitive. It is stated by Applicant that on the previous day i.e. on 26.02.2021 deceased had mentioned in his whatsapp chat that he was unhappy, depressed and wanted to commit suicide and when Applicant attempted to pacify him, deceased abruptly switched off his mobile phone. According to defence, due to strained relationship with his wife, deceased was unhappy and therefore he committed suicide. It is averred by the Applicant in the Revision Application that on 27.02.2021, she alongwith her parents went to Khandeshwar Police Station for reporting the entire incident, where her statement was recorded, but no FIR was registered.

3. Mr. Singh, learned Advocate for Applicant would submit that there are three allegations in the FIR alleged by wife of deceased against Applicant. He would submit that all three allegations are vague, insufficient and without any evidence, much less prima facie evidence having placed on record. Hence, the plea of discharge. While drawing my attention to page No.45 in the FIR in the first instance it is alleged that the wife gave 15 tola gold to the deceased to pledge the same with Federal Bank and paid that amount to Applicant. As against this allegation, he has drawn my attention to page No.79 of the Bank Account Statement and the entry reflecting receipt of the amount of Rs.3,75,000/- in the deceased's Bank Account and immediately thereafter on the same date he having paid of Rs.3,38,566/- in respect of Pay Off of his another Loan Account No.14756200025550. He would contend that as alleged by prosecution, the alleged amount of Rs.3,75,000/- is not received by deceased in cash from the Bank and paid to Applicant. Hence, on this count the allegation in the FIR is completely false on the basis of the prosecution record itself.

3.1. Next, he would submit that on page No.210 of the CRA, Investigation Officer (for short "IO") during investigation has specifically addressed an email to the manager of Make My Trip App for seeking details of the stay of the deceased alongwith Applicant at Hotel Rio in Goa from 24.01.2021 to 26.01.2021 to which the said App has replied and categorically informed that they were unable to find any such transaction made by the given mobile numbers of Applicant or deceased in Goa during the above mentioned period. However, in respect of the said mobile numbers certain other transactions were discovered with respect to hotels in Alibaug, Karjat, Navi Mumbai, and Lonavala, which was informed but without providing any further details. However this does not establish the allegation of prosecution that both deceased and Applicant were together in Goa or at any other place one month before the incident. He would contend that allegations in FIR is very specific namely that deceased had visited Goa and it was suspected by complainant that Applicant was with her husband - the deceased on those dates i.e. from 24.01.2021 to 26.01.2021. He would therefore submit that this second allegation with respect to the specific allegation regarding Applicant and deceased having visited Hotel Rio in Goa for 3 days stands disproved completely on the strength of the prosecution evidence.

3.2. The third allegation in the FIR is that mobile phone of accused be seized in order to establish the fact that immediately before committing suicide, the Applicant was in constant conversation with deceased and once this is seen it would lead to the inevitable conclusion that the Applicant was harassing the deceased and mentally torturing him leading to committing suicide and thus has abetted the offence. In answer to this allegation, he would submit that even though Applicant's mobile phone was seized, nothing incriminating has been found by the IO in the said mobile phone data and record so as to establish the role of Applicant abetting the suicide or for that

matter harassing the deceased.

3.3. Next, he would draw my attention to the statements of the father, mother, brother, all recorded on 22.03.2021 appended at page No.59 onwards and would contend that these statements have identical allegations as those made in the FIR and therefore nothing incriminating was found in those statements without corroboration or prima facie evidence. He would draw my attention to page No.224 of the CRA on which the brother's statement dated 27.02.2021 is recorded by the police wherein the brother of deceased has not stated a singular allegation incriminating the Applicant.

3.4. He would draw my attention to the statement of the complainant recorded on 09.04.2021 under Section 164 Cr.PC appended at page No.53 to contend that in the said statement, complainant has not stated a word about the amount of Rs.3,75,000/-allegedly paid to Applicant or about any pressurising tactics used by the Applicant or about any obscene photographs and videos about which Applicant had threatened to publicly circulate and the said statement is bereft of any allegations which are made in the FIR.

3.5. Lastly, he would draw my attention to the whatsapp chat between Applicant and deceased, which forms part of the charge-sheet. These chats are of 26.02.2021 and 27.02.2021 and after elaborately taking me through the said stream and trail of whatsapp chat, he would contend that there is nothing incriminating therein to indict or alleged that Applicant was responsible for mentally torturing the deceased into committing suicide. On the contrary, he would submit that if the said whatsapp chats are read it would inevitably conclude that matrimonial relationship between deceased and his wife was strained due to which deceased was depressed and he mentioned about ending his life and it was the Applicant who constantly dissuaded him from entertaining such a thought process.

3.6. He has referred to and relied upon the following judgments in support of his submissions:-

(i) **Mangal Kashinath Dabhade and Anr. Vs. State of Maharashtra and Anr.** 2024 SCC Online Bom 754;

(ii) **Sudha Prathima Vs. State of Andhra Pradesh** 2023 SCC Online AP 4422;

(iii) **Gadipudi Anitha and Ors. Vs. State of Andhra Pradesh and Ors** MANU/AP/0788/2023;

(iv) **Kanchan Sharma Vs. State of Uttar Pradesh and Anr.** (2021) 13 SCC 806;

(v) **Dilawar Balu Kurane Vs. State of Maharashtra** (2002) 2 SCC 135;

(vi) **Union of India Vs. Prafulla Kumar Samal and Anr.** (1979) 3 SCC 4; and

(vii) **David D'Souza Vs. State of Karnataka** MANU/KA/1333/2024.

3.7. He would submit that in order to frame charge under Section 306 IPC, it must be specifically alleged and a prima facie case has to be established on the basis of cogent material on record that the Applicant committed any such act which led to the deceased to commit suicide. He would submit that there is not a singular incriminating fact / material placed on record which would prima facie establish that on the basis of any such act of Applicant, she instigated, aided, provoked the deceased to take his life. He would submit that in the present case there is no suicide note. That apart, none of the ingredients of abetment as envisaged under Section 107 IPC are attributable to any act of Applicant leading to the incident. He would submit that a mere bald allegation by the first informant – wife in her FIR cannot form the basis of alleging that it led to the deceased committing suicide and there is no prima facie case made out against the Applicant. Hence, the order rejecting the discharge Application under Section 306 IPC deserves to be quashed and set aside.

3.8. He would submit that the police filed charge-sheet against Applicant under Section 306 IPC and Session Case No.88 of 2022 is registered and pending trial. On 16.03.2024, Applicant filed discharge Application before Trial Court. On 24.04.2024, Trial Court rejected the Application. Being aggrieved, Applicant has filed the present CRA to challenge the rejection of the discharge Application.

3.9. He would submit that in the present case there is no evidence showing that Applicant played any active role which led to abetment of suicide. Neither the deceased nor his other family members including his wife have raised any grievance against any alleged harassment by Applicant on the deceased before any authority prior to the incident. Thus, he would submit that the allegations in the FIR are frivolous and a complete afterthought without any cogent material placed on record. Hence, he would persuade the Court to allow the Revision.

4. PER CONTRA,, learned APP Ms. Phad, appearing for the State has vehemently opposed the submissions of the learned Advocate for Applicant and would submit that in the present case once it is prima facie established that Applicant and the deceased were in conversation with each other via whatsapp chat immediately before the deceased committing suicide at 01:30 p.m. on 27.02.2021, the said evidence clearly establishes the role of Applicant in abetment of the offence. Hence, Applicant cannot be discharged and exonerated at this stage without facing a trial.

4.1. She would vehemently submit that it is only because of the prolonged and protracted conversation between Applicant and deceased on 27.02.2021, deceased was pressurised by Applicant, coupled with her threats leading him to take his own life because of her threats.

4.2. She would submit that deceased committed suicide solely because Applicant created a difficult situation for him which is evident from the whatsapp chat. Therefore, such conduct of Applicant in itself is an act for abetting suicide. Hence, Trial Court has rightly rejected the discharge Application of the accused and therefore she prays for dismissal of the present CRA.

5. I have heard Mr. Singh, learned Advocate for the Applicant and Ms. Phad, learned APP for Respondent – State and with their able assistance perused the record of the case. Submissions made by learned Advocates have received due consideration of the Court.

6. The undisputed facts in the present case are that Applicant and deceased knew each other for about two years. This is despite the fact that Applicant was married to first informant / complainant and was also the father of a girl child who was 2 years old on the date of incident. On 27.02.2021, deceased committed suicide in his house by hanging to a ceiling fan. There is admittedly no suicide note. Applicant and deceased were conversing with each other on whatsapp chat messenger until 01:20 p.m. on 27.02.2021 when the deceased suddenly switched off his mobile phone. Immediately thereafter Applicant repeatedly tried contacting him, but his phone was switched off. Hence, Applicant called his Manager Mr. Anna, a family staff of deceased, then his cook Mr. Arjun and the electrician to enquire about the deceased and to check on him as she intuited / apprehended something wrong. As per charge-sheet the cook with the help of mother and Mr. Anna brought down the deceased and rushed him to hospital after 1:30 p.m., where he was declared brought dead.

7. It is only 23 days later i.e. 22.03.2021, first informant wife of deceased registered FIR against Applicant and Applicant was incarcerated for about 30 days in jail and thereafter enlarged on bail. In July, 2021 charge-sheet was filed. On 16.03.2023, Applicant filed discharge Application which was rejected by the impugned order dated 24.04.2024. Hence, present CRA is filed under Section 397 read with Section 401 of Cr.PC to challenge rejection of discharge order.

8. Learned Single Judge of the High Court of Chhattisgarh at Bilaspur in his judgment in the case of **Ku. Pooja Chopra and Ors. Vs. State of Chhattisgarh, through the Station House Officer** 2023 SCC Online Chh 5411 has quoted with approval the principles on which revisional jurisdiction can be exercised. Paragraph No.8 of the said decision is relevant and reproduced below:-

**“8. In case of Amit Kapoor vs. Ramesh Chander, reported in (2012) 9 SCC 460, Hon'ble Supreme Court has laid down the principles to be borne in mind for proper exercise of jurisdiction under Section 397 or 482 CrPC, as the case may be, particularly in the context of quashing of charge. The principles in Amit Kapoor's case (supra) were recently quoted with approval in case of Manendra Prasad**

**Tiwari v. Amit Kumar Tiwari & another, reported in 2022 SCC Online SC 1057. One of the principles on which revisional jurisdiction can be exercised is that if the allegations are patently so absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. Relevant principles culled out by Hon'ble Supreme Court in aforementioned decision read thus:-**

**“27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.**

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**27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.**

**XXXXXX XXXXX XXXXX**

**27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.**

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**27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.”**

**9. In the present case, it is seen that there is no suicide note and hence the moot question which would arise for consideration is whether considering the whatsapp conversation / chat between Applicant and deceased immediately prior to the act of committing suicide, would be of such an incriminating nature to constitute the offence of abetment to suicide against Applicant. This is because, this whatsapp chat is the prima facie material according to prosecution for indicting the Applicant.**



10. The relevant provisions of law which would be applicable in the present case are Section 107 IPC, which defines 'abetment', and Section 306 IPC which provides punishment for 'abetment of suicide'. Section 107 IPC 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.”**

11. Section 306 of IPC is also extracted below for ready reference:-

**“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.”**

12. A bare reading of the above provisions would demonstrate that for an offence under Section 306 IPC, there are twin requirements, namely, suicide and abetment to commit suicide. Commission of suicide is not made punishable, not because commission of suicide is not culpable, but for the reason that the person culpably responsible would have departed from this world before he can face any indictment. Whereas, abetment of commission of suicide is viewed very seriously by law.

13. In the case of *Ku. Pooja Chopra and Ors.* (8th Supra) the learned Single Judge has referred to several decisions of the Supreme Court which deal with acquittal of accused from the charge under Section 306 IPC or a situation arising to bring an offence under Section 306 IPC as contemplated by Section 107 IPC on the part of accused with an intention to induce the commission of suicide of the concerned person (deceased). The learned Single Judge has also referred to the following five decisions while quoting with approval that in order to constitute abetment within its meaning under Section 107 read with Section 306 IPC, there has to be or should be an active suggestion, instigation or encouragement on the part of the accused to lead to the act to commit suicide by the deceased:-

(i) **State of West Bengal Vs. Orilal Jaiswal** (1994) 1 SCC 73;

(ii) **Randhir Singh Vs. State of Punjab**(2004) 13 SCC 129;

(iii) **Amlendu Pal @ Jhantu Vs. State of West Bengal** (2010) 1 SCC 707;

(iv) **Madan Mohan Singh Vs. State of Gujarat** (2010) 8 SCC 628; and

(v) **State of Kerala Vs. S. Unnikrishnan Nair** AIR 2015 SCW 4814.

14. It is cautioned that even harassment simpliciter cannot constitute abetment within its meaning under the law.

15. The facts of the present case in light of the above position of law needs to be examined to find out whether prima facie case is made out by prosecution which would constitute an offence under Section 306 IPC or the allegations are so improbable that a prudent man would not arrive at the conclusion and that there are sufficient grounds to proceed with the trial.

16. As pleaded by prosecution in the present case, incriminating evidence and material against the Applicant is the statement of the first informant / complainant wife. It is seen that the FIR is lodged after 23 days of the incident i.e. on 22.03.2021 which is appended at page No.23 of the CRA. On reading the FIR, there are three specific allegations stated therein. The complainant wife has stated that she and her family members were aware about the extra-marital affair between Applicant and deceased since its inception. It is stated that in February, 2019 she alongwith her parents-in-law visited Applicant's house to dissuade her from keeping any contact with deceased. It is stated that at that time, Applicant realised for the first time that deceased was married and therefore she immediately returned the mobile phone gifted to her by deceased to the first informant / complainant wife. It is also an admitted fact that from February, 2019 until December, 2020 there was no contact between Applicant and deceased according to first informant. In defence of Applicant, it is stated that deceased thereafter attempted to keep contact with Applicant by occasionally visiting her below her office and made emotional overtures to her due to his strained relationship with his wife / first informant.

17. The first allegation in the FIR is that in December, 2020 the first informant wife gave 15 tola gold ornaments to deceased to pledge it with Federal Bank for procuring a gold loan of Rs.3,75,000/-, which was paid by deceased to Applicant. In so far as this allegation is concerned, the prosecution has relied on the Federal Bank statement of deceased from the year 2018 to 2021. The said statement is appended from page No.78 onwards. Perusal of the said statement clearly shows that indeed Federal Bank transferred an amount of Rs.3,75,000/- as gold loan on the pledge of four bangles and one gold necklace by deceased in his Bank account, but it is seen that on the same day, the said loan amount of Rs.3,75,000/- was used by deceased for repayment and Pay Off of an outstanding loan of the deceased towards his another Loan Account No.14756200025550 and the fact that the said amount of Rs.3,75,000/- was paid to the Applicant is not brought on record nor it is prima facie evident from the material on record. Hence, this case of the complainant fails.

18. Next, it is alleged in the FIR that between 24.01.2021 to 26.01.2021, deceased visited Goa alongwith his friend and the said friend was none other than Applicant.

In this regard, IO has obtained details from Hotel Rio in Goa, where deceased was alleged to have stayed alongwith Applicant. Investigation was carried out with Make My Trip App who was asked to produce the relevant details by informing in writing to the I.O. on the basis of the concerned phone numbers, either belonging to Applicant or deceased and whether they were used for making any booking of a hotel room in Goa from 24.01.2021 to 26.01.2021. In this regard, the bookings were made from the mobile numbers with respect to completely different transactions with respect to hotels in Alibaug, Karjat, Navi Mumbai and Lonavala at various other times. Hence, this specific allegation about the Applicant and deceased spending time together in Goa stands prima facie negated.

19. The third and the last allegation in the FIR is that if mobile phone of Applicant is retrieved, then the threat given by Applicant to deceased that she would publicly circulate private photographs and videos of herself and deceased unless she would be paid money would be proved. In this regard, the mobile phone of the Applicant as also deceased have been recovered by the IO. On going through the data and record of both the phones, no incriminating material whatsoever has been found so as to link this third specific allegation of causing mental torture and harassment to the deceased by the Applicant for extracting money from him. No material is placed on record.

20. It is seen that statement under Section 164 Cr.P.C. of the complainant appended at page No.53 is recorded on 09.04.2021. The most significant aspect in this statement of complainant is that it does not reproduce or make any allegation whatsoever with respect to the first allegation in the FIR that deceased had paid an amount of Rs.3,75,000/- to the Applicant or the third allegation about private photographs and video or incriminating material between Applicant and deceased was threatened to be disclosed in the public domain by Applicant or about any pressuring situation created by her leading to mental torture and harassment to deceased, ultimately resulting in abetment to commit suicide by him. It is thus seen that statement of complainant under Section 164 Cr.P.C. is completely bereft of the specific allegations made in the FIR itself.

21. Therefore, what remains to be now looked into is the whatsapp conversation / chat between Applicant and deceased immediately before the incident took place which is the only prima facie material remaining and relied upon by the prosecution. Whatsapp chat between the parties is a part of chargesheet and is appended from page No.138 onwards. It is seen that on 26.02.2021 i.e. previous date at about 11:22 p.m. deceased sent a whatsapp message to the Applicant and they had a conversation / chat which when seen would show that the deceased sounded depressed. At this time the deceased mentioned the word 'suicide' as he sounded very depressed about his life. There is nothing in this chat to show that deceased was threatened by the Applicant rather, he was finding comfort in speaking / chatting with the Applicant.

22. Thereafter on 27.02.2021, deceased and Applicant once again had conversation / chat on whatsapp messenger App wherein the deceased sounded depressed and was unhappy with his life. He would repeatedly state being unhappy and would like to end his life but not due to any reason attributable to Applicant. Rather he praised the Applicant and found comfort in her replies which show that Applicant was dissuading him from entertaining any thought about ending his life and it clearly does not appear at any stage that she blackmailed or harassed or threatened him. This whatsapp conversation / chat is also a part of the charge-sheet and I have perused the same. It is seen that there is nothing incriminating in this whatsapp conversation / chat which would even remotely suggest that the Applicant has made an active suggestion or instigation or encouragement to the deceased to commit suicide much less there is no mental torture or harassment induced by the Applicant. Once there is no specific relevant material which would meet the ingredients of the definition of abetment under Section 107 IPC to be read with Section 306 IPC so as to suggest that the Applicant has induced the deceased to such a situation which would leave no option for him but to commit suicide, the indictment of Applicant for the aforementioned offence under Section 306 IPC.

23. What is crucial to be noted in such a case is that there is no instigation or provocation induced by Applicant in the nature of continuous harassment or mental torture or goading or provocation of the deceased which would lead to creating a situation for him to end his life. What the conversation / chat of 27.02.2021 on the contrary shows that it is to the effect that deceased himself at various times sounded depressed but it is the Applicant who has responded on the chat and kept talking / chatting with him so as to bring him from his state of depression at those instances. What is critically important in the present case is the fact that at about 01:20 p.m. the Applicant apprehended that there was something seriously wrong as deceased had switched off his mobile phone. She repeatedly called him on his mobile phone to receive no answer and only when she did not receive an answer to her calls, she called up the cook and the Manager of deceased and asked them to immediately check on the deceased. Had the Applicant being responsible for committing any act of mental torture and harassment of deceased to push him to commit suicide as alleged, she would not have called up the cook and the Manager of deceased and asked them to check on him after 01:30 p.m. on the date of incident. In that case, there would have been no reason whatsoever for her to do so. In this context, statement of complainant and family members of deceased which have been recorded are important. The statement of the complainant wife which is the FIR and the allegations contained therein do not find mention in her statement recorded under Section 164 Cr.P.C. which was subsequently recorded by police. Statement dated 27.02.2021 of the brother of deceased appended at page No.224 of the Application does not state anything against or about the Applicant. On the contrary the said statement states that deceased

committed suicide owing to some unknown reason and that he neither has any suspicion on anyone nor wants to lodge any complaint against anyone regarding the said incident.

24. The whatsapp conversation / chat which is heavily relied upon by prosecution does not even remotely suggest that there was any quarrel between Applicant and the deceased. Had it been so, they would not have continued conversing with each other on 27.02.2021. Nothing incriminating is attributable from that conversation between the parties to suggest that Applicant pushed and instigated the deceased to commit suicide or the fact that the said conversation was a precursor and a lead out in the nature of mental torture and harassment induced by the Applicant on the deceased as alleged by the prosecution.

25. It is true that deceased has lost his life, but what is crucial is that in the statements of the complainant and the family members which have been recorded, there is no allegation which even prima facie suggests from the available material on record that the Applicant instigated, conspired and provoked the deceased to commit suicide.

26. It is clearly seen from the whatsapp conversation / chat which form part of the charge-sheet that the deceased was under depression due to his strained relationship between him and his wife and he was finding solace in conversation and chatting with the Applicant. There is no imminent threat whatsoever given by Applicant to the deceased stating that she would expose him by publicly sharing their incriminating material, photographs and videos. Such allegation found in the statements of complainant and the family members of deceased are merely hearsay without any prima facie evidence placed on record. The IO has also not produced any material in the charge-sheet retrieved from the mobile phones of both parties to corroborate this allegation. In so far as the brother's statement is concerned, he has recorded two statements; first one on 27.02.2021 wherein he did not indict the Applicant and second one on 22.03.2021 wherein the statement is identical to the FIR.

27. There is no material or document placed on record to show that Applicant had threatened the deceased and has even remotely threatened him to harm his reputation in any manner whatsoever so as to abet commitment of suicide by the deceased. It is therefore required to be borne in mind that in cases of alleged abetment of suicide there must be prima facie proof evidence of direct or indirect act of indictment leading to commission of suicide which is clearly absent in the present case. Hence, merely on the basis of allegations about harassment and mental torture without there being any positive material proximate to the time of occurrence of the incident on the part of the Applicant which led or compelled the deceased to commit suicide, order of rejection of discharge Application for offence under Section 306 IPC is not sustainable. What is crucial is that Applicant is required to be shown to have played

an active role by any of her act of instigation by her immediately before the deceased committed suicide by any manner in this case to facilitate the commission of suicide. Hence, it is the duty of prosecution to establish and prove any such act of abetment committed by Applicant to indict her in the said offence.

28. The Supreme Court in the case of **Ramesh Kumar Vs. State of Chhattisgarh** (2001) 9 SCC 618 while explaining the meaning of 'Instigation' in paragraph No.20 of the said decision, explained in so many words what 'Instigation' means. Paragraph No.20 of the said decision of the Supreme Court is quoted herein above and hence principles and necessary ingredients of Section 306 IPC read with Section 107 IPC which are required to be found in a given case to allege abetment of suicide are clearly absent in the present case. It is therefore seen that Applicant has not played any active role or any positive or direct act to instigate or aid the deceased in committing suicide. It is further seen that neither the statement of complainant nor the family members as recorded by the IO during investigation would suggest any kind of instigation by Applicant to abet commission of suicide by the deceased.

29. Hence, none of the essential ingredients of Section 107 read with Section 306 IPC are existing in the present case prima facie. Merely on the basis of whatsapp conversation / chat, the allegations in the complaint do not substantiate a prima facie case against the Applicant.

30. While investigating the matter, IO has not placed on record anything which is of incriminating nature which would immediately point out a finger towards the Applicant or the role of Applicant to instigate his thought process to commit suicide in his mind. The prima facie evidence relied upon by prosecution which are the recorded statements of the family members of deceased are not sufficient enough to frame a charge against Applicant for abetment of suicide under Section 306 IPC in the present case. If the allegation made by the first informant wife is even prima facie held to be true and correct, then there is nothing on record prima facie to corroborate such an allegation about deceased having received any threats from Applicant and the deceased or his family members having approached or filed any complaint about it with the police or any Authority with regard to any such threat and demand for money made by Applicant.

31. The learned Single Judge in the case of Ku. Pooja Chopra and Ors. (8th Supra) has quoted with approval, the findings and observations of the Supreme Court in the case of **Geo Verghese Vs. The State of Rajasthan** 2021 SCC Online SC 873 in paragraph No.31, which is in my opinion clearly applies to the present case. Paragraph No.31 of the said decision of the learned Single Judge reads as under:-

**"31. If a lover commits suicide due to love failure, if a student commits suicide because of his poor performance in the examination, a client commits suicide**

because his case is dismissed, the lady, examiner, lawyer respectively cannot be held to have abetted the commission of suicide. For the wrong decision taken by a man of weak or frail mentality, another person cannot be blamed as having abetted his committing suicide. My above view is fortified by the decision of Hon'ble Supreme Court in case of *Geo Verghese vs. The State of Rajasthan & anr*, reported in 2021 SCC Online SC 873, wherein Hon'ble Supreme Court while quashing FIR under Section 306 of IPC, has observed thus:-

**“30. If, a student is simply reprimanded by a teacher for an act of indiscipline and bringing the continued act of indiscipline to the notice of Principal of the institution who conveyed to the parents of the student for the purposes of school discipline and correcting a child, any student who is very emotional or sentimental commits suicide, can the said teacher be held liable for the same and charged and tried for the offence of abetment of suicide under Section 306 IPC.”**

32. In view of my above observations and findings in the present case, I am of the considered opinion that, prima facie, neither there is material available on record to hold that there is a grave suspicion against the Applicant having committed any offence punishable under Section 306 IPC nor the ingredients of Section 107 of IPC for abetment by the Applicant to induce the deceased to commit suicide are present in the present case or any such case is made out even remotely by the prosecution.

33. In the absence of any cogent material on record of any definite nature, which would even prima facie point out any circumstance to highlight the role of Applicant in inducing or threatening or instigating the deceased to abet the commission of suicide, the impugned order is not sustainable.

34. In view of the foregoing reasons and discussion, Criminal Revision Application is allowed in terms of prayer clause “a” which reads thus:-

**“a) That, this Hon'ble Court be pleased to call for and examine the records and proceedings of Session case No. 88 of 2022 pending before the Panvel Session Court, and after examining the legality, validity, propriety and correctness of the order dated 24<sup>th</sup> April 2024 passed on Exhibit 12 be set aside and quashed and accused/applicant be discharged from the Session case No. 88 of 2022.”**

35. Resultantly, the Applicant is discharged.

36. Bail bond of the Applicant stands cancelled.

37. Criminal Revision Application is allowed and disposed in the above terms.