

(1996) 11 BOM CK 0003

Bombay High Court (Nagpur Bench)

Case No: Criminal Application No. 1457 of 1996

Kantiram @ Nilkanth
and another

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: Nov. 28, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 306

Hon'ble Judges: S.P. Kulkarni, J

Bench: Single Bench

Advocate: E.W. Nawab, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.P. Kulkarni, J.

This matter involves a prayer for anticipatory bail in Crime No. 114 of 1996 registered by Police Station Khapa. Indeed the offence that is involved, is said to be one u/s 306, Indian Penal Code on the background of failure of some love affair between the deceased and the applicant No. 2 Indrajit. On the background of that what is said is that the accused uttered filthy words in relation to the chastity of the deceased and they further uttered that she should die. This was with a view to cut off relations between Indrajit and the deceased. On the background that the deceased seems to have received burns and died, there is no consistent theory with respect to whether the death was accidental or suicidal, the reason being that though the reply of the State indicates that even on 9-10-1996, before registering any crime an information regarding the accidental death goes from the Mayo Hospital to the Police Station, still there also appears to be oral dying declaration made by the deceased on 4-10-1996, a dying declaration received by the Police

Constable which he reduced to writing and also a dying declaration recorded by the Executive Magistrate on 8-10-1996, wherein there seems to be a consistent case as regards the suicide on account of the failure of the love affair and the instigation of the accused. In spite of this consistency, the offences could not come to be registered for as many as 7 days i.e. till 13th of November, 1996. Though the investigation papers are referred to show that there was no case of any information being received about the deceased suffering burns while cooking food and, a reference to that in the reply in para 2 cannot satisfactorily explain or justify any truly dependable prima facie position.

2. Normally remedy of anticipatory bail would not be available in cases where prima facie dependable allegations in respect of serious offence are alleged. However, two factors which weigh in considering this case differently from the one described above, i.e. that in spite of the Police papers indicating consistent theory of suicide, the earlier steps taken by the Police indicate accidental death. Reference to burns received while cooking made in the reply filed by the State does not seem to have any justification to ignore it and that there was delay of seven days in registering the crime which also equally seems to be a factor which needs to be taken into consideration. On the background of this, this case stands on the different footing than one where relief u/s 438. Criminal Procedure Code should be refused.

3. The allegation was that the applicant was absconding. Well, mere description that a person is absconding would not be enough. In order to avoid involvement in a case which a person considers to be unjustified against him, a person may also make effort only to keep himself, away from the Police machinery. In my view, therefore, relief u/s 438, Criminal Procedure Code is deserved in this case and it is a fit case. However, it shall be subject to the following directions :

ORDER

(1) The applicants Kantiram and applicant No. 2 Indrajit are found entitled to be released on bail in the event of their arrest in the crime in question on executing bail bond with surety in the sum of Rs. 1,000/-by each.

(2) They shall within three days from today, present themselves at the Police Station, Khapa at 9 A.M. and make themselves available for the purposes of investigation and interrogation and thus, co-operate the Police Machinery.

(3) They shall not enter the village Khapa without intimation to the Police.

(4) They shall not until further orders to be passed by the trial Court, leave their place of residence at Khasara without giving prior information to the Police. Hamdast allowed.