

REPORTED

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLICATION NO.530/2009

DATE OF RESERVE: May 8, 2009

DATE OF DECISION: May 19, 2009

AJIT SINGH

..... Petitioner

Through: Mr. R.S. Malik, Mr. V.K. Malik and
Mr. Siddharth Ahlawat, Advocates

versus

THE STATE (GOVT. OF N.C.T. OF DELHI) Respondent

Through: Mr. Manoj Ohri, APP for the State along
with Investigating Officer Inspector
Samarjeet Singh, P.S. Sultan Puri
Mr. Prasoon Kumar, Advocate for the
complainant

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **REVA KHETRAPAL, J.**

1. This is an application under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.690/2008, registered under Sections 306/34 IPC with P.S. Sultan Puri, Delhi.

2. The facts of the case, as set out in the chargesheet are that on 23.11.2008, on receipt of D.D.No.8-A, Sub Inspector Saroop Singh along with Constable Rakshak reached the place of occurrence, i.e., the Gher of Raj

Singh, son of Bhim Singh, Village Pooth Kalan, where several persons had gathered. The dead body of Raj Singh, aged about 65 years, was found hanging from the branch of a Neem tree in the said plot. His shoes were lying on the floor and his shawl was near the tree. Satwant Singh and Bharat Singh, the two sons of the deceased, were found present at the spot. The dead body of Raj Singh was brought down after cutting the rope. From the personal search of the deceased, a suicide note was recovered from the upper pocket of his shirt, wherein it was stated:-

“Dated 23.11.08 I, Raj Singh, S/o Bhim Singh,
My family which include Ajit Singh S/o Deep Chand and his
three sons have made my life and the lives of my children
miserable. They have made our lives difficult. Therefore,
considering myself unfortunate, so I am taking this step. My
children should be able to live peacefully so I am taking this
step. Moreover, my children are not responsible for it.

Your's Raj Singh
Pooth Kalan,
House No.176”

3. On the same day, i.e., on 23.11.2008 at about 11.20 a.m., Satwant Singh, son of deceased Raj Singh, got recorded his statement at the spot, stating that he was residing at 176, Pooth Kalan, Delhi and that a plot measuring 80 sq. yards falling in Khasra No.55/20, at Village Rithala, Delhi existed in the name of his father (the deceased Raj Singh), where a boundary wall had been constructed by them and the same was in their possession for

the last 25 years. Since the last two months, his father's cousin, Ajit Singh and his three sons, namely Anil, Ashish and Ajay, had been extending threats to their lives in order to grab the said plot. On 22.11.2008, the said Ajit Singh and his three sons came at the plot and started digging a trench/foundation. At that time, he along with his father Raj Singh, his brother Bharat and his sister Sunita, was present in the nearby area. Ajay and Anil (the sons of Ajit Singh) attacked him and his father with a broken Campa Cola bottle, whereupon Sunita intervened, who sustained injury on her hand. Bharat informed the police at No.100 and the police from the Vijay Vihar Police Station came and took him, his father Raj Singh and his brother Bharat as well as Ajit Singh and his sons Anil and Ajay, to the Police Station. There, Ajit Singh and his sons again threatened to kill them. The same night Ajit Singh and his sons came to their house and banged on their door with dandas, asking them to open their door as they wanted to kill them. As a result of the harassment caused by Ajit Singh and his sons, who had also threatened that they would kidnap his sister, and because of the prevalent tension of the last many months, his father had committed suicide.

4. On the aforesaid statement of Satwant Singh, a case under Section 306 read with Section 34 IPC was got registered by SI Saroop Singh after sending the 'tehrir' to the police station, and, thereafter investigation was handed over

to the SHO Inspector Samarjeet Singh, who obtained the post-mortem report of the deceased, which opined the cause of death to be “asphyxia as a result of ante-mortem ligature hanging”. On 25.11.2008, the petitioner Ajit Singh was arrested and the admitted handwriting and signature of the deceased Raj Singh was taken from his son Bharat Solanki and the State Bank of Patiala, Pooth Kalan, Delhi, whereafter the admitted documents and the questioned document (the suicide note of the deceased) were deposited in the FSL for comparison. After completion of the investigation, the chargesheet against the petitioner Ajit Singh was filed on 24.01.2009. The three sons of the petitioner were, however, not arrested in the case as no specific evidence was found by the police to prosecute them under Section 306 IPC, and their names were accordingly kept in Column No.2 of the charge-sheet.

5. In the course of hearing, the learned counsel for the petitioner, Mr.R.S.Malik, Advocate, contended that the petitioner, who has been in custody ever since 25.11.2008, deserved to be released on bail, as nothing had emerged on record to show that there was any instigation on the part of the petitioner within the meaning of Section 107 of the Indian Penal Code, so as to justify the registration of the offence of abetment to suicide under Section 306 of the Code. The learned counsel heavily relied upon the judgments of this Court in *Hira Lal Jain Vs. State, 2000(2) JCC 478, Umesh Gupta Vs. State,*

122(2005) DLT 473, Neeraj Gupta Vs. State, 2006(3) JCC 1221 and Prashant Manchanda Vs. Lt.Governor of Delhi & Another, 139(207) DLT 423, and of the Hon'ble Supreme Court in Swamy Prahaladdas Vs. State of M.P. & Another, 1995 Supp.(3) SCC 438, Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, 2002(2) JCC 847, Mahendra Singh Vs. State of Madhya Pradesh, 1995 Supp.(3) SCC 731 and Ramesh Kumar Vs. State of Chhattisgarh, (2001) 9 SCC 618 in this regard. The learned Additional Public Prosecutor for the State, Mr.Manoj Ohri, on the other hand, implicitly relied upon the suicide note, allegedly written by the deceased, squarely blaming the petitioner and his three sons for his death, on the ground that they had made his life and the lives of his three sons insufferable.

6. The learned counsel for the petitioner also vehemently contended that from the revenue records, that is, from the Khatuni of Khasra No.55/20, it was evident that the petitioner was the owner of one half share, whereas the deceased Raj Singh and his brother Karan Singh had joint share in respect of the other half of the plot. The real bone of contention, he submitted, was that the family of the deceased had occupied an area more than their share, which had led to the dispute. The legitimate claim of the petitioner and his family to get their half share in the aforesaid Khasra, by no stretch of imagination, could be considered to be an act of “abetment” within the meaning of

Section 306 IPC. The present FIR had been registered without there being an iota of evidence of any abetment, instigation or the like on the part of the petitioner, or any incitement of the deceased Raj Singh to commit suicide, and hence the basic ingredients of the offence under Section 306 were lacking. The investigation in the present case had been concluded and the charge-sheet had been filed in the court of concerned Metropolitan Magistrate, and no fruitful purpose would be served by keeping the petitioner in jail, more so, as the petitioner is a senior citizen with clean antecedents and has no chance of absconding being a permanent resident of Delhi.

7. First, a look at Section 107 of the Code. The said section defines abetment to mean that a person abets the doing of a thing if he firstly, 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. Explanations 1 and 2 of Section 107, which are apposite read as under:-

“Explanation 1. - A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.”

8. From a reading of aforesaid provisions, it is clear that a person, who instigates or aids another to do a thing, abets him to do that thing. In order to attract the offence of abetment of commission of suicide, thus, an overt act or some act or omission, which instigates/aids the victim to commit suicide is a *sine qua non*. Not only this, the said act or omission must be the immediate cause of the suicide. In other words, it is in the essence of things that the abettor substantially assists towards the commission of the offence. This is evident from the whole tone and tenor of the Section which uses doing words (verbs) such as ***“instigates”, “engages”, “aids by any act or illegal omission”, “misrepresents”, “conceals”, “causes or procures”, “attempts”, “facilitates”*** and the like. That the presence of mensrea is a necessary concomitant of the offence of abetment is also crystal clear from the legislature's use of the words/phrases ***“intentionally”, “voluntarily”*** and ***“by wilful misrepresentation or by wilful concealment”***. These then are the parameters laid down by Section 107 of the Code.

9. In this backdrop, it is deemed expedient to highlight a few relevant facts set out in the charge-sheet and the status report filed in the instant case. It is expressly stated in the chargesheet that the land of Khasra No.55/20 Village

Rithala, Delhi was in the joint names of the petitioner Ajit Singh, deceased Raj Singh and his elder brother Karan Singh, and this was the genesis of the dispute between the respective families of the deceased Raj Singh and the petitioner Ajit Singh. During investigation, the involvement of the sons of the petitioner, namely Anil, Ashish and Ajay, however, was ruled out as no evidence could be garnered against them and, as already stated, their names were shown in Column 2 of the charge-sheet. In the status report filed by the SHO Mohinder Singh, P.S. Sultan Puri too, it is mentioned that preventive action under Sections 107/150 Cr.P.C. against both the parties, i.e., Raj Singh (now deceased) and his sons Satwant Singh and Bharat Singh (party No.1) and Ajit Singh (the petitioner herein) and his son Anil Kumar (party No.2), was initiated on 22.11.2008, vide DD No.7 dated 22.11.2008, Police Post Budh Vihar, Police Station Vijay Vihar, Delhi.

10. A bare perusal of the Kalandra in the said case further shows that it has been recorded therein that the dispute between the parties pertained to a plot of land viz., D-1/57, Sharma Colony, Budh Vihar Phase-II, in respect of which both the parties claimed proprietary rights, and that both the parties had family relations and belonged to the same village, but instead of sorting out their disputes in a court of law, both the parties frequently quarrelled about the apportionment/partition of the plot and filed complaints, written and verbal

against each other. Thus, despite the fact that the dispute was civil in nature and should have been sorted out by the parties in a court of law, both the parties refused to approach a court of law, preferring instead to bicker and squabble.

11. The fact that there was a dispute regarding the demarcation of the plot of land in question between the family of the deceased and the family of the petitioner, assuming the prosecution story to be correct in its entirety, by itself, in my opinion, cannot lead to the conclusion that the petitioner abetted the deceased in the commission of suicide. Even if the suicide note (in respect of which the FSL report is still awaited), is conclusively proved to be in the hand of the deceased, the same, in my view, in no manner substantiates the statement of the complainant that the deceased died on account of incitement/abetment on the part of the petitioner. Words uttered in rage or anger or in the course of a quarrel, or abuses, taunts and threats traded in the course of a dispute, without intending the consequences to actually follow, it is well settled, do not amount to instigation. In the instant case, the parties are stated to be warring against each other for a considerable period of time over the demarcation of the plot of land, in which both have half share each. Threats meted out to the deceased, assuming that they were meted out, cannot be said to amount to instigation and may, at best, amount to harassment. Even

otherwise, the incident, which is alleged to have occurred on 22.11.2008 during the daytime finds no mention in the suicide note, nor the incident of the same night finds any reference in the last missive of the deceased nor the deceased has even alleged that he was threatened or intimidated in any manner. No MLC of Sunita, who is alleged to be injured in the said incident, has been placed on record to substantiate the occurrence of the incident. Not only this, investigations have revealed that the sons of Ajit Singh had no role to play and a clean chit has been doled out to them by the prosecution, thereby falsifying the version of Satwant Singh (both with regard to the incident which allegedly took place in the morning and at night), and leading to the inference that the entire story with regard to the extending of threats on 22.11.2008 has been concocted by the complainant, possibly for the purpose of arm twisting the petitioner. This apart, the story is not corroborated by any neighbour or any other public witness. Then again, the dispute was admittedly an old one. When and why the mind of the deceased started harbouring suicidal thoughts can only be a matter of conjecture and surmise. Impulsiveness, desperation, frustration, anger or even undue or hyper sensitivity could have actuated the thought of suicide. Whatever be it, it cannot be lost sight of that the prosecution's own case is that the suicide was the result of a petty civil dispute blown out of all proportion. If it led to the deceased extinguishing his own life,

the blame cannot be thrown at someone else's door, even if he is an adversary or an enemy. There is, therefore, considerable merit in the contention of the petitioner's counsel that the petitioner in no manner spurred or assisted the strangulation of the deceased, which was self-inflicted in every sense of the word.

12. The petition is accordingly disposed of with the direction that the petitioner, who has already suffered incarceration for almost six months, be released on bail on his furnishing a personal bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of the concerned trial court.

13. Needless to state that any observations made in the present order shall have no bearing on the merits of the case as and when the same are considered by the learned trial court and that the same have been made for the sole purpose of consideration of the bail plea of the petitioner.

14. Bail Application No.530 of 2009 stands allowed in the above terms.

A copy of this order be given '*dasti*' to the counsel for the petitioner.

REVA KHETRAPAL, J.

MAY 19, 2009

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