

IN THE HIGH COURT OF DELHI

+ Bail.Application.No. 1568/2009

Date of decision: 12th August, 2009

Mahesh Singh Yadav ... Petitioner
through: Mr. Sidharth Luthra, Sr. Adv. with Mr. H.S.
Chaudhary and Mr. Mohammad Fasal, Adv.

VERSUS

The State Respondents
through: Mr. Manoj Ohri, APP for the state with ASI Ram
Phal from PS Sarai Rohilla

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

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

GITA MITTAL, J(Oral)

1. By this application u/s 438 of the CrPC Sh. Mahesh Singh Yadav seeks grant of anticipatory bail in FIR No.177/09. The facts giving rise to the application to the extent necessary are briefly noticed hereafter.
2. The applicant states that he was married Smt. Manju Yadav on 22nd May, 1983. From their wedlock, they were blessed with three children. The eldest daughter namely Surbhi @ Swati was born on 19th February, 1986 while a second daughter namely Priyanka was born on

19th May, 1990. Their third child, a son, born on 23rd April, 1993 was named Abhishek. The applicant submits that at this time, the parties were residing at 554, Jain Mandir Gali, Chota Bazar, Shahdara, Delhi with the parents of the applicant. Subsequently, it is stated that they moved to a rented accommodation.

3. The applicant alleges interference and mis-behaviour in the married life of the parties by the brothers of his wife. As per the applicant, he was thrown out of the house on 12th February, 1999 by his wife and her brothers after being beaten and that he has not cohabited with his wife and children from such date.

4. On 30th June, 2009, Surbhi, the eldest daughter of the applicant is alleged to have committed suicide at the age of about 23 years. On the complaint of the wife of the applicant, the police officers of police station Serai Rohila registered FIR No. 177/2009 on 30th June, 2009 under section 306/34 of the Indian Penal Code implicating the petitioner, his relatives and a lady with whom the applicant is stated to be residing and having an illicit relationship.

It is also urged that the deceased Surbhi has left a suicide note implicating the applicant, his relatives and the same lady.

The applicant has sought grant of anticipatory bail in this case.

5. Mr. Sidharth Luthra, learned senior counsel appearing for the applicant has urged at great length that the very fact that the applicant was separated from his wife and children since 12th February, 1999 by itself shows that there is no proximity or nexus between any act of the applicant which could be relatable as a cause of suicide by the deceased. It is submitted that a period of 10 years had lapsed since the separation and for this reason, no connection can be drawn between the cause of the suicide and any act or omission of the applicant. It has further been urged that for the provisions of Section 306 of the IPC to be attracted, the offence of abetment of suicide has to fall within the ambit of the provisions of Section 107 of the Indian Penal Code. The submission is that the applicant cannot be implicated even for abetment of the suicide of his deceased daughter.

6. Learned senior counsel has urged at length that there was extensive litigation between the applicant and his wife Smt. Manju Yadav. It is pointed out that she had lodged a complaint registered by the police station Farash Nagar, Delhi as FIR No. 167/1999 under Section 498A/406 of the Indian Penal Code against the applicant and his relatives which is pending trial in the Karkardooma Courts, Delhi.

Another complaint by his wife against the applicant FIR No. 249/00 was registered by the police station Farash Bazar under Section 406 IPC on the allegation that the applicant has not returned his wife's Maruti Zen car despite her demand which is also pending for trial. The wife of the applicant alongwith the children had filed a petition under Section 125 of the Code of Criminal Procedure for grant of maintenance and under Section 12 of the Domestic Violence Act which are pending trial.

7. The applicant has submitted that he learnt about the act of suicide having been committed by his daughter at around midnight of 16th/17th July, 2009 when the police from police station Sarai Rohilla visited his house with his brother-in-law and some other anti-social elements in his absence and ransacked his house. A grievance is made in the application that he was not joined in the last rites and ceremonies of his deceased daughter either by his wife or by any of her relatives.

8. Learned senior counsel has urged at great length that having regard to the length of the litigation and the animosity between the applicant and his wife, he has been falsely implicated in the case.

9. It has also been urged that the deceased Surbhi @ Swati was working as a teacher in the R.M. Arya Girls Senior Secondary School, Raja Bazar, Gole Market, Delhi for the last one year and that no act or omission is attributable to the applicant towards her unfortunate death.

10. In support of the submission that no case of abetment by suicide was made out against the applicant. Mr. Sidharth Luthra, learned senior counsel has placed reliance on the pronouncement of the Apex Court reported at (2002) 2 JCC 847 Sanju @ Sanjay Singh Sengar vs State of Madhya Pradesh and the pronouncement of this court reported at 89 (2001) DLT 150 Roop Kishore Madan vs. State.

11. Learned senior counsel has urged at some length that the applicant was separated from the deceased for a period of 10 years and referred to the litigation noticed above to urge that there is no proximity between any act of the applicant and the suicide.

12. Learned APP, on the other hand, has vehemently contested the submissions made by learned senior counsel for the applicant. It is contended that the deceased had suffered gravely at the callous disregard and cruelty of her father who is the present applicant and has committed suicide only because of his acts and omissions. He has contended that the deceased has left a suicide note wherein she has

made specific allegations against the applicant and his relatives. The deceased suffered complete rejection from the applicant and his relatives and has ascribed a specific role to the applicant for the extreme trauma leading to her suicide.

13. So far as the pronouncement reported at **89 (2001) DLT 150 Roop Kishore Madan vs. State** is concerned, this judgment was rendered in a case where the deceased was having a relationship with a married person and in the suicide note left by her she stated that she was mentally tortured by the petitioner for the reason that he had abused and emotionally blackmailed her; promised to marry her after divorcing his wife but had refused to do so. The court considered the conduct of the deceased person and amongst others circumstances, had noted the fact that the deceased was fully aware of the fact that the petitioner was a married man and knowingly had got into the relationship. It was observed that the deceased was frustrated due to the petitioner not leaving his wife.

14. In **(2002) 2 JCC 847 Sanju @ Sanjay Singh Sengar vs State of Madhya Pradesh**, the Apex Court was concerned with a petition seeking quashing of charges which had been framed against the appellant under Section 306 of the Indian Penal Code. In para 12 of

this judgment, the court laid down the principle that the word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of *mens rea*, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with *mens rea*.

15. In the case before the Apex Court, the court had referred to the fact that the statement made by the brother of the deceased under Section 161 of the CrPC did not attribute any statement to the appellant to the effect that he should go and die. However he improved on his statement in court and attributed this exhortion to the appellant which was disbelieved. It was further observed that between the date of the alleged quarrel between the deceased and the appellant and the suicide, there was enough time for the deceased to think over and reflect over the matter and therefore it could not be said that the abusive language which had been used by the appellant had driven the deceased to commit suicide. The court was of the view that the suicide by the deceased was not proximate to the abusive language attributed to the appellant. It is to be noted that the case of the prosecution against the appellant was that of having instigated him to commit suicide.

16. As per section 306 of the Indian Penal Code, if any person commits suicide, who ever abets the commission of such suicide is also liable for the punishment detailed in the section.

Abetment of a thing has been defined under Section 107 of the Indian Penal Code. Learned senior counsel for the applicant has contended that there is no act which could be attributed to the applicant which could be covered under any part of Section 107. He has placed reliance on two judicial precedents, both relating to instigation of a person to commit suicide. However, it requires to be noted that section 107 contemplates three kinds of actions on the part of a person who is accused of abetment of an offence. While the first part refers to instigation of any person to do a thing, the second part is concerned with a conspiracy for the doing of any thing. The third part of section 107 refers to an act or illegal omission of a person whereby he intentionally aids the doing of that thing.

17. It is to be noted that no absolute proposition can be urged so far as a case under Section 107 or 306 of the Indian Penal Code is concerned. The question as to whether an act or omission on the part of an accused person has proximity or nexus or provides the stimulus or instigation for a person committing suicide has to be considered in the facts and circumstances of every case. Further more, evidence

which is available before a court at the time of final consideration of the case or even after the filing of the charge sheet is not available to the court at the time when the police is still investigating the matter and an application seeking grant of anticipatory bail is under consideration. This fine but clear distinction is to be borne in mind while considering the prayer for anticipatory bail made on behalf of an accused person. At the same time, a careful balance has to be drawn between the rights of the accused person and his entitlement to liberty as against the requirement of custodial interrogation which may be necessary in order to effectively and fairly investigate the matter by the investigating agency.

18. So far as the argument that the applicant had separated from his family members including the deceased about a decade ago and consequently he can have no connection to her act of suicide is concerned, has to be scrutinised in the facts and circumstances of the case and cannot by itself also be urged as an entitlement to anticipatory bail.

19. It is also to be kept in mind that no absolute proposition can be laid down for evaluating conduct which may instigate a person to commit suicide. The standard has to be that of impact of conduct on a

reasonable person while carefully evaluating the effect of the conduct attributed to the accused person or the deceased person.

20. Section 107 is thus not confined to a positive action alone whereby there is instigation to commit suicide. It covers 'omission' as well.

21. The present case does not relate to suicide by a spouse. In a given case, while the same conduct may be considered as held to be as not amounting to something which instigates a spouse to take his/her life, the same conduct may be highly detrimental and provocative in the mind of their child even of normal sensibilities. Behaviour of sparring spouses emanates from several feelings and perceptions of matrimonial rights and wrongs. None of these are expected to colour either emotions or conduct towards the child. This is not to say that such conduct may be permissible behaviour between spouses. This court is called upon to consider acts and omissions which could be considered as sufficient to instigate an off spring to commit suicide. It would, therefore, not be proper to draw parity between conduct of a husband vis-a-vis his wife and the impact of the conduct on his children. For this reason a distinction is to be drawn between the judicial precedents relied upon by learned senior counsel for the

petitioner. A young twenty three year old daughter who despite her stated desperate situation managed to get education and secure employment, committed suicide for acts and omissions which she has attributed to her father, the present applicant.

22. The suicide note has been placed by learned APP before this court. The same refers to the applicant as the cause for the destruction ('barbadi') of the deceased and her mother and siblings. The anguish of the deceased is to be found in her statement that she alongwith the siblings were the responsibility of the applicant and instead they have been dumped on her mother's relatives. She has stated that instead of bearing their responsibility, he is enjoying an illicit relationship with his consort. There is repeated reference to the humiliation and the trauma which the deceased was undergoing at the hands of the applicant.

23. During the course of arguments, it was stated on behalf of the applicant that he has paid maintenance of total sum of Rs.1 lakh over the 10 years to his wife and three children. The same works out to payment of barely about Rs.1,000/- per month. Even to secure this paltry amount, it appears that not only the wife of the applicant but his children were dragged into protracted and, it appears, highly contested extensive litigation which is pending even on date and has

not concluded finally despite a decade having passed. This court does not have the benefit of the defence taken by the applicant to his daughter's prayers for maintenance and support. Prima facie the applicant did not support her prayers for meeting her needs.

Financial deprivation, humiliation in society, the continued rejection or ostracisation by the applicant and his relatives and shame which the deceased appears to have been feeling at the acts of the applicant and the rejection of his real family has also been expressed by the deceased.

The deceased refers to the extremes which have been suffered by not only all of them but her maternal relatives as well who have been compelled to provide shelter to them because of the actions and omissions on the part of the applicant.

24. From the above narration, it would appear that the deceased would have been a child of twelve or thirteen years when her parents separated. The anguish of a child cannot be compared with the animosity which may be nurtured by a spouse. Undoubtedly, the pain threshold varies from person to person. The forbearance which prima facie appears to have been reflected in the conduct of the deceased in the suicide note itself reflects the resilience which any other reasonable person may not have borne. Therefore, it cannot

be urged that merely because the torment may have existed for a long time, the acts and omissions which are attributed by the deceased to the applicant have no nexus or proximity with the cause of death. What was the kind of hope or optimism that the child nurtured and what was her reaction to the actions or omissions of the applicant; how the separation from her father and deprivation of sustenance impacted her and somehow turned to complete hopelessness is stated in the suicide note and what act or omission triggered off final action of the deceased is to be investigated.

25. It may be noticed that the deceased does not appear to be a person who is hyper sensitive. Prima facie, her conduct does not appear to be in the nature of sensitivity to ordinary petulance, discord and differences in domestic life which may be common to the society to which the parties belong.

26. The present matter is at the initial stage of investigation and the police is looking into the entire matter. It has been urged that interrogation of the applicant is essential for investigation.

27. So far as the investigation is concerned, at this stage, it therefore cannot be said that the conduct of the applicant has no connection or nexus or proximity with the cause of suicide by his

deceased daughter. The deceased has not only referred to the omissions by the applicant with regard to his responsibility towards her mother, herself and her siblings but also to his action of maintaining an illicit relationship. What was the last straw on the camel's back and triggered the deceased action in hanging herself by the fan using her chunni would be revealed during the course of investigation.

At this stage, it is, therefore, not possible to hold that there is no element of abetment to the act of suicide committed by the deceased daughter of the applicant or that he has been falsely implicated.

I, therefore, find no merit in this application which is dismissed.

August 12, 2009
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Gita Mittal, J.