

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 21.09.2022

Date of decision: 17.11.2022

+ BAIL APPLN. 1935/2022

UPENDER SHISHODIYA

..... Petitioner

Through: Mr. Viraj R. Datar, Sr. Advocate with
Mr. R.S. Kundu , Mr. Pankaj Kumar
Deval, Mr. Shailendra Solanki, Mr.
Nitish Chaudhary & Mr. Saurav Joon,
Advocates.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr. Shoaib Haider, APP for State with
SI Ghanshyam, PS Wazirabad.
Mr. Shekhar Nanavaty, Advocate for
complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The applicant, vide the present application seeks the grant of regular bail in relation to FIR No.424/2022, PS Wazirabad, under Section 306 of the Indian Penal Code, 1860 submitting to the effect that he has been falsely implicated therein in relation to allegations against him of abetment of suicide of his wife.

2. Notice of the application was issued to the State. Vide the status report dated 01.07.2022 under signatures of the SHO, PS

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Wazirabad, it was submitted to the effect that on 03.05.2022 an information Vide DD No.97A in relation to MLC No. E-3102/08/22 of Diksha W/o Upendra Sisodia, i.e., of the wife of the applicant, was received at the Police Station Wazirabad from the GTB Hospital, stating to the effect "*Gas se jalne par uske pati ne use admit karaya hai*", and that the same was marked to SI Shankar who reached the GTB Hospital and collected the MLC of the victim Diksha, on which the Doctor mentioned "Alleged History of Burn and injury was under observation". *Inter alia*, it is stated through the said status report that during enquiry, victim Diksha stated that a fire incident had taken place in her house, and her husband had got her admitted in the GTB Hospital, after which, she was referred to the Safdarjung Hospital for further treatment. As per the said status report, the injured could not tell details about the fire incident. The copy of the MLC prepared by the GTB Hospital, Shahdara of the then injured, i.e., the wife of the applicant, as per local examination, showed that the injured was brought by the applicant herein and was examined on 03.05.2022 at 2:17 PM, when she was found to be fit for statement at 2:54 PM on 04.05.2022, and that the injuries sustained by her as recorded in the local examination were to the effect:-

"Local Examination

- *Burn injury on Neck*
- *Burn injury on Chest*
- *Burn injury on Hand (Rt)*
- *Burn injury on Back (Rt)*
- *Burn Injury on Abdomen*
- *Burn injury on Rt Arm*
- *Burn injury on Rt Hand*
- *Burn injury on Rt Shoulder"*

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3. As per the said status report, on 22.05.2022, an information was received Vide DD No. 85A from Safdarjung Hospital that the victim Diksha died during the course of the treatment, and on the same day, the victim's brother named Raghav along with his 2-3 relatives came to the PS Wazirabad and gave a written complaint against his brother-in-law, the applicant herein. It is stated through the said status report that the complainant Raghav stated that his brother-in-law, the applicant, had been working as a chef in Hyderabad; that his sister was married with the applicant on 28.02.2011, and out of the wedlock, they have two children aged 10 years and 7 years; that his sister often complained about harassment and ill behavior meted out to her by her husband for the last two years; and she also stated that her husband was in relationship with a girl namely Saima Sarreen at Hyderabad. *Inter alia* it was stated through the said complaint by the complainant Raghav that the applicant often used to beat the victim and mentally torture her by saying that he would divorce her and would marry Saima. The complainant Raghav has further stated therein in his complaint to the effect that his sister also shared many photographs and videos of atrocities committed by her husband and also stated that the mother-in-law of the victim also used to side with her son.

4. It has been stated through the said status report that the statement of the complainant Ankit Raghav was recorded, and in view of the statement and the MLC, an FIR bearing No. 424/22, PS Wazirabad, under Section 306 of the Indian Penal Code, 1860 was

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registered and that the further investigation of the case was handed over to SI Ghanshyam.

5. It has been submitted further through the status report that the complainant had also stated that on 30.05.2022 (that is apparently a typographical error and ought to read as 03.05.2022), the victim had called his mother and stated that she was fed up with the torture committed on her and that she would that day inform the police about this, but when consoled by the complainant's mother, the victim had replied that either her husband would kill her or she would commit suicide due to these atrocities herself, and then her call ended suddenly.

6. It is stated further through the said status report that on 04.05.2022, when the victim's younger brother named Abhishek visited her sister's house, he learned that his sister was admitted in the GTB hospital due to burning, and at hospital when asked about the incident, she stated that firstly her husband had poured Kerosene oil on himself and then on instigation by her husband, she too poured leftover kerosene oil on herself, and during the verbal arguments when she entered into kitchen, fire had got attracted and she got burnt, and that the complainant also stated that his brother-in-law had taken an insurance policy of Rs. 50 Lakhs in the name of the victim, and used to taunt her that after her death, he would start a business with the insurance money and marry again.

7. It is stated through the said status report that the applicant was arrested on 23.05.2022 and was sent to Judicial Custody, and that the mobile phone of the applicant and of the deceased were taken into

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police possession, which had then been sent to the NCFSL IFSO for mirror imaging and retrieval of all data of the mobile, and that the DVR of the cameras installed at the place of the incident were taken into police possession and had also been sent to the NCFSL IFSO for further examination.

8. As per the said status report, the further statement of the mother of the victim Sunita W/o Dharamveer Singh was recorded wherein she stated that since 04.05.2022 till the death of the victim, she had remained present in the hospital with her daughter, and during that period, her daughter narrated about the atrocities she was facing in the last two years as committed by her husband, and that her daughter also shared on the mobile phone of her brother earlier photographs of the violence and beating done to her by her husband Upendra, which were taken into police possession. The mother of the deceased/victim specifically stated through her statement that Upendra, the applicant, was having an extra martial affair with a girl namely Saima Sarren, and this remained the cause of the day-to-day altercations between both of them. The mother of the deceased is also stated to have provided one pen drive containing a video wherein her daughter Diksha was seen speaking that “*Meri maut ka zimmedar sirf mera pati Upender hoga*”, which was also taken into police possession.

9. The State has submitted thus that through the statements recorded during investigation and evidence collected, that the same corroborated the version put forth in the FIR against the appellant.

10. The State has also stated through the said status report that on 27.05.2022, the Postmortem Report of the deceased Diksha was

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received from the Safdarjung Hospital, as per which, the doctor had opined that **“Death was due to septicemia as a result of ante-mortem infected thermal burns, involving about 25% of total body surface area”**.

11. In continuation to the previous status report and pursuant to directions dated 01.08.2022 in view of the pendrive stated to have been handed over during investigation by the complainant to the Investigating Officer, the State had been directed to submit the transcript of the video/audio recording along with the certificate under Section 65B of the Indian Evidence Act, 1872, and the transcript of the video recording of duration of 4:36 seconds and the audio recording of duration 7 seconds, 11 seconds and 10 seconds was placed on record by the State with its subsequent status report dated 16.08.2022. The said transcript of the conversation reads to the effect:-

“Video Call/recording, Duration 4:36 Sec.

Men	<i>Ab Btao Kya hua Tha, Aapke Sath Mein?</i>
Women	<i>Hum Dono Ka Do Saal Se leke Vivaad Chal Raha Tha, Ye Hyderabad Rehta Hai</i>
Men	<i>Hunn</i>
Women	<i>Hum Akele Rehte Hai, Saas Aur Bachcho Se Sahare, Jab Se Coronakal Hua Hai Iska Baat Karne Ka Tarika Badal Gaya Tha, Mujhe Bataya Gaya Ise Kisi Musalmani Ke Yaha Ghumna Firna, Baten Karna Aata Hai, Ye Ghar Bhi Udhar Se Baaten Karta Tha Phone Pe ladta Tha, Jab Ye 8 Mahine Baad Ghar Aaya Maine Isse Raat Ko Bahar Bhagte Dekha, Is Kone Mei Kahde Hoke Baat Kar Raha Hai, Us Kone Mei Khade Hoke Baat Kar Raha Hai. At least Maine Video Call Bhi Dekhi, Ye Video Call Pe Bhi Baat</i>

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*Karta Tha, Aur Mere Phochne Pe Hatha Pai Bhi Hoti Thi, Jab Main Sawal Karti Hun Ke Itni Video Call Kyun Hain Kisi Ki, To Bolta Hai Friend Hai, Raat Ko 12-12, 1-1 Baje Kon Friend Hoga Jo Video Call Karegi? Puchne Pe Hatha Paai Hoti Hai, Main Apne Bachon Ko, Chahte Hai K Mere Bachche Achchi Tarha Rahe, Achche Tarha Padhe, Jaise Sab Maa Ka Sapna Hota Hai. Itni Pagal Nai Hun Jo Main Apne Pati Ki Harkaton Pe Nazar Na Rakh Sakun Ke Aaj Ye Ghar Pe Aaya Achche Se Na Hanse Bole, Aur Dusre Se Achchi Tarha Hanse Bole. Ek Galat Shak, Bar Bar Phone Kar Raha Hai Ye Kar Raha Hai. Agar Inke Man Mei Koi Galat Baat Nahi Hoti To Wo ladki Mere Se Baat Karte Huye Kyun Katra Rahi Thi? Aur Hamari Personal Chat Tak Us ladki Ko Bhejdi Jati Hai, Ke Diksha Ese Keh Rahi Thi, Jab K Miya-Biwi Ki Personal Chat Kisi Tisre Bande Ko Nahi Bheji Jani Chahye. Apne Maa-Baap Ko Batao Wo Alag Baat 'Bai, Magar Tisra Person Isme Invole Nahi Hota Miya Biwi Ki Baton Pe. Ek Din Mere Bhai Ki Shadi Ke Bare Mei Hum Dono Mei Itni Baat Bad Gayi Ke Pucho Mat, Reason Wo ladki Hi Thi Aur Kuch Nahi Tha. Ek Din Hamari Khoob Hatha-Pai Hui, Dusre Din Hum Me Normal Ho Gaya Sab Kuch, Teesre Din Isne, Is Bachane Ke Chakkar Mein, Mera Ye Haal Hogaya, Aise Aadmi Ka Kya Vishwas Karun Main. Isne Apne Upar Tarpeen Ka Jo Tel Dala, Wo Tel Mere Upar Bhi Aaya. Magar Meri Saari Mei Aag lag Gayi, Isne Bujhai, Par Wo Taarpeen Ka Tel Blauge Pe Aaya, Is Bachate Bachate Main Khud Hi Jal Gayi. Koi Bhi Aurat Apne Aadmi Ko 'Aanch Aana Pasand Nahi Karti Hai, Chahe Apne Aako, Mai Bas Main To Yahi Chahti Hun Ke Ham Dono, Main Is Rishte Ko Naam Dena Chahti Hun. Chalo Jo Kuch Hua Sahi Hai, Agar Hum Apas Mei Ghar Mei Baith Ke Baaten Karen Na lade To, Isse To Office Se Aane Ke Baad Chai Ke liye Puchho To Bi Chillam Chilli Ke Siwa Kuch Nahi Milta Hai, Chilla-Chilla Ke Padna, Hath Uthana, Badtamizi Karna Ye Fitrat Hai. Par Main Fir Bhi Is Rishte Ko, Ek Bar Apne Bachon Ke liye Bachana Chahti hun aur kuch nahi. **Agar aage se mere saath koi bhi durghatna hoti hai, To /ska Jimmewar Yahi Hoga.***

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Call duration 7 Sec. Only

Women	<i>Meri Maut Ka Asli Jimmedar, Mera Pati Hai</i>
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Call duration 11 Sec. Only

Women	<i>Mera Beema Karane Ki wajah Se, Wo Chahte Hain Ki Main Mar Jaaun, usne mera 50 Lakh Ka Beema Kara Rakha hai, aur isliye wo chahta hai ke main mar jaaun</i>
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Call duration 10 Sec. Only

Women	<i>Agar meri maut hoti hai, to meri maut ka zimmedar mera pati Upendar hai, aur ye police station mei de diyo.</i>
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and the certificate under Section 65B of the Indian Evidence Act, 1872 is annexed to the said subsequent status report, as certified by SI Ghanshyam, the Investigating Officer, certifying that the transcript statement is an output of the video/audio recording of the pendrive 64 GB taken into police possession from the deceased's brother Abhishek Raghav, as an electronic record, and when it was produced, it was not edited or otherwise in any way.

Vide order dated 06.09.2022, in as much as, the status report dated 16.08.2022 submitted by the State at page 3 of the same did not mention the date of the conversation as per the transcript, the Investigating Officer was directed to place the same on record vide order dated 06.09.2022, which was so placed on record vide the status report dated 19.09.2022, and as per this status report dated 19.09.2022 submitted under signatures of the SHO, PS Wazirabad, it was submitted to the effect:-

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“2. It is submitted that audio recording of duration 07 sec, 11 sec. 10 sec were sent on 20/3/2022 by deceased Diksha to her mother namely Smt. Sunita Singh (witness) on her mobile number 6398888725. It may please be noted that in this regard a detailed statement of Smt. Sunita Singh was also taken on 25/6/22, during the course of investigation in the present case.

3. Further it is submitted that video clip of duration 04:36 sec was prepared by deceased's brother namely Abhishek Ragahav at GIB Hospital Delhi on 05/05/2022. It may please be noted that in this regard a detailed statement of Abhishek Ragahav was taken on 25/6/22 and the mobile phone which was used for making the said clip was taken in police possession and sent to FSL.

4. That the copy of the transcript statement of the audio recording of dated 20 March 2022 and video recording of dated 05 May 2022 are already annexed with previous Status Report.”

12. On behalf of the applicant, it has been submitted through submissions made through the application as well as through the written submissions dated 23.09.2022, that the petitioner having been arrested on 23.05.2022 had till the said date been approximately in custody for more than 120 days excluding the interim suspension of three (3) days granted by this Court vide order dated 06.09.2022.

13. It has further been submitted by the applicant that even without considering any defence of the petitioner at this stage as per the FIR No.424/2022, and the contemporaneous statement of the deceased recorded on 04.05.2022 by the Investigating Officer, no offence, whatsoever, is made out against the petitioner herein, and that the purported video recording relied upon by the respondent and the

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complainant does not diverge from the statement recorded on 04.05.2022, and rather supports the case of the petitioner.

14. It is further stated by the petitioner that as per the statement contained in the FIR and the supporting video recording, it was the categorical case of the deceased that any/all disputes between the petitioner and the deceased were resolved between the couple one day prior to the incident, but that on the next day i.e., 03.05.2022, the petitioner allegedly divulged some personal chat of the deceased with a third-person woman, due to which a dispute arose on 03.05.2022, and that, undisputedly, owing to the said dispute, the petitioner attempted to self-immolate and poured kerosene oil on himself in order to commit suicide.

15. The applicant has further submitted that in order to save the petitioner, the deceased had intervened and caught some oil on her own clothes, and caught fire in the kitchen, and that it was not disputed that the petitioner tried to put out the fire and immediately took the deceased to the hospital, and ensured her treatment till death. It is further submitted by the petitioner that despite instructions from the deceased not to inform her family, the petitioner had duly informed the family members of the incident. The petitioner further submits that the deceased underwent medical treatment from 03.05.2022 to 22.05.2022, on which date she expired, and that there was no mala fide attributed to the petitioner as far as the incident on 03.05.2022 is concerned nor after 03.05.2022.

16. The applicant further submits that, as per the prosecution itself in terms of the status report filed on 26.07.2022, the deceased had 30-

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35% burns on her body, and had also contracted Covid-19 when she was undergoing treatment in the hospital, and was being treated in the Covid ward for such period of infection. *Inter alia*, the applicant submits that the immediate cause of death of the deceased is stated to be “septicemia”, but that in view of the Covid-19 infection, it cannot be ruled out that the same had played a part.

17. The applicant further submits that the deceased had never even remotely alleged that the subject matter of the incident was caused deliberately by herself as an attempt to commit suicide, but even as per her version, the same was merely an accident wherein the husband i.e. the petitioner herein was trying to self-immolate and the deceased had tried to save him and suffered the accident. The applicant submits that there is not even an attempt to commit suicide let alone actual suicide, and that there was nothing on record to suggest any deliberate action having been taken by the deceased to commit suicide, due to any abetment attributable to the petitioner. On behalf of the applicant, it has thus been submitted that the fundamental ingredient of the alleged commission of the offence punishable under Section 306 of the Indian Penal Code, 1860 of both the suicide and an abetment are wholly absent in the instant case.

18. *Inter alia*, the applicant submits that even the allegations of extramarital interest of the petitioner do not advance the case of the prosecution, and in as much as, in absence of the elements of “suicide” or “abetment”, even if the couple were facing matrimonial disturbances, the same cannot be a consideration to keep the petitioner in jail.

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19. *Inter alia*, the petitioner submits that the charge sheet has already been filed in the matter and investigation is complete, and there is no requirement of the petitioner to be kept in custody, especially when he is required to be released in order to take care of and raise his minor children, who have already been deprived of their mother due to her demise and are now being deprived of their only other parent, i.e., the petitioner, who is incarcerated.

20. On behalf of the petitioner reliance was placed on a catena of verdicts in support of the plea of the petitioner that there was no role that could be attributed to the petitioner qua the alleged commission of an offence punishable under Section 306 of the Indian Penal Code, 1860 even remotely.

21. The petitioner has thus placed reliance on the verdict of the Hon'ble Supreme Court in *Velladurai Vs. State 2021 (228) AIC 166*, with placing reliance in paragraphs therein to the effect:-

"7. We have heard the learned Counsel for the respective parties at length.

7.1. The Appellant has been convicted mainly for the offence Under Section 306 Indian Penal Code. It is not in dispute that the marriage between the Appellant and the deceased took place before 25 years. It is also not in dispute that out of the said wedlock, the deceased and the Appellant had three children, residing separately. It is true that on the day of occurrence, there was a quarrel between the deceased and the Appellant herein-Accused and thereafter both, the Appellant and the deceased consumed pesticide. Even the Appellant-Accused also consumed pesticide and he was hospitalized for four days and was discharged from the hospital after four days. However, unfortunately the wife died. The earlier quarrels between the husband and the wife on the allegation that the Appellant-Accused was having illicit relationship with another woman has not been established and proved by the prosecution. Even the daughter of the Appellant has not supported the case of the

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prosecution and turned hostile. In light of the aforesaid facts and circumstances and the evidence on record, it is required to be considered, whether can it be said that the Appellant-Accused has committed an offence Under Section 306 Indian Penal Code for which he has been convicted?

8. As observed hereinabove, the marriage between the Appellant-Accused and the deceased took place before 25 years. Therefore, the presumption Under Section 113-A of the Evidence Act shall not arise.

9. Now so far as the offence Under Section 306 Indian Penal Code is concerned, in a case where if any person instigates other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished for the offence Under Section 306 Indian Penal Code for abetting the commission of suicide. Therefore, in order to bring a case within the provision of Section 306 Indian Penal Code, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide. As observed and held by this Court in the case of Amalendu Pal (supra), mere harassment without any positive action on the part of the Accused proximate to the time of occurrence which led to the suicide would not amount to an offence Under Section 306 Indian Penal Code.

9.1. Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the Accused had, by his acts or omission created such circumstances that the deceased was left with no other option except to commit suicide. In the instant case, the allegation against the Appellant is that there was a quarrel on the day of occurrence. There is no other material on record which indicates abetment. There is no material on record that the Appellant-Accused played an active role by an act of instigating the deceased to facilitate the commission of suicide. On the contrary, in the present case, even the Appellant-Accused also tried to commit suicide and consumed pesticide. Under the circumstances and in the facts and circumstances of the case and there is no other material on record which indicates abetment, both the High Court as well as the learned trial Court have committed an error in convicting the Accused for the offence Under Section 306 Indian Penal Code.”

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to submit to the effect that there was not a shred of evidence collected in the matter to bring the case within the ambit of the provision of Section 306 of the Indian Penal Code, 1860 against the petitioner, in as much as, there was no material on record to indicate that the applicant played any active role in the act of instigating the deceased to facilitate the commission of suicide, and rather, as per the prosecution version, it was the applicant also who had attempted to commit suicide.

22. Reliance was placed on behalf of the petitioner on the verdict of this Court in *Atul Kumar Vs. State of NCT of Delhi and Ors.* in CrI. M.C. 39/2020 a verdict dated 23.08.2021, where there was no live link nor any proximity between the acts of petitioner and act of committing suicide by the deceased discernible, with the requisite *mens rea* on part of petitioner also being lacking, the ingredients of offence punishable under Section 306 of Indian Penal Code, 1860 were held to be not made out against the accused.

23. The applicant has further placed reliance on the verdict of this Court in *Prakash Jarwal Vs. State*, Bail Appln. 1348/2020, a verdict dated 24.06.2020 to reiterate the contentions that there was no proximity and link in the alleged commission of the offence alleged against the petitioner.

24. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Kanchan Sharma Vs. State of Uttar Pradesh and Ors.* 2022 (1) ACR 713 to contend to the effect that in the absence of sufficient material incriminating the applicant, there was no basis to proceed against the applicant qua the alleged

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commission of the offence punishable under Section 306 of the Indian Penal Code, 1860.

25. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Gurcharan Singh Vs. The State of Punjab*** 2021 (217) AIC 65 to contend to the effect that in all crimes *mena rea* is to be established and to prove the offence of abetment as specified under Section 10 of the Indian Penal Code, 1860, the state of mind to commit a particular crime must be visible to determine the culpability, and that in order to prove *mens rea*, there has to be something on the record to establish or show that the applicant had a guilty mind and in furtherance of that state of mind had abetted the suicide of the deceased. *Inter alia*, it has been submitted on behalf of the applicant placing reliance on the said verdict, that the ingredient of *mens rea* cannot be assumed to be ostensibly present but has to be visible and conspicuous, and that in the instant case, it is not borne out that the deceased committed suicide due to any act attributed to the applicant.

26. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***Shabbir Hussain Vs. State of Madhya Pradesh*** 2021 (3) KLJ 892 in support of the contentions that there was no material on the record which indicated any abetment of the commission of suicide by the deceased and rather submitted that there was nothing to indicate that any suicide has been committed by the deceased.

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27. Through the status report dated 19.09.2022 submitted under signatures of the SHO, PS Wazirabad for compliance of directions dated 06.09.2022, whereby it was directed to be effect:-

“In terms of order dated 01.08.2022, the transcript of the statement submitted by the complainant in the form of a pen drive has been placed on the record by the State. The date of the conversation as per the transcript placed at page 3 of the status report dated 16.08.2022 is not mentioned, the Investigating Officer of the case shall place the same on the record before the next date of hearing.”,

it was submitted by the State that the audio recording of duration 07 sec., 11 sec. and 10 sec. were sent on 20.03.2022 by deceased Diksha to her mother namely Smt. Sunita Singh (witness) on her mobile number 6398888725, and that it may be noted that in this regard a detailed statement of Smt. Sunita Singh was also taken on 25.6.22, during the course of investigation in the present case. It was further submitted by the State that the video clip of duration 04:36 sec. was prepared by the deceased's brother namely Abhishek Ragahav at the GTB Hospital Delhi on 05.05.2022, and in this regard a detailed statement of Abhishek Ragahav was taken on 25.6.22 and the mobile phone which was used for making the said clip was taken in police possession and sent to the FSL. It was further submitted by the State that the copy of the transcript statement of the audio recording of dated 20.03.2022 and video recording of the date 05.05.2022 are already annexed with the previous Status Report.

28. Through written submissions submitted on behalf of the complainant dated 23.09.2022, it was submitted that the true facts of

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the matter were that for more than two (2) years (*i.e. prior to the incident apparently*), the accused was in an extra marital affair with one Saima Sareen, which was causing regular fights between the accused and the victim due to which the victim was regularly being beaten and threatened with dire consequences, in relation to which the victim had confided in her mother.

29. The complainant submits further that the victim had also been sharing her photographs showing her condition due to physical torture and beatings with her family which have already been submitted to the Investigating Officer. *Inter alia*, the complainant submits that during the ongoing fights between them, a few months ago, the accused had taken an insurance policy in the name of the victim worth a sum of Rs.50,00,000/-, which was to be received in the case of death of the victim, and since then, the physical torture and beatings/threatening had been increased, and the victim sent audio messages to her mother suggesting that the accused will kill her and had planned to do so. The complainant further submits that the said audio recordings had also been handed over to the Investigating Officer and transcript of the same had also been submitted before the Court. *Inter alia*, the complainant submits that the medical report of the deceased victim further clarified that the same was due to the burns and not due to Covid-19 infection, and that though the victim was infected with Covid-19, she had recovered from the same before finally succumbing to the burn injuries.

30. *Inter alia*, on behalf of the complainant, it has been submitted that the accused had not received any injury/burn on his body despite

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the fact that the victim was merely trying to save him from committing suicide and that he had already put the thinner/kerosene over himself. It was thus submitted that the accused as well as the police did not inform the parents/brothers of the victim while she was taken to hospital, and that her brother came to know about the situation from a neighbour when he came to visit the victim's house, and after this incident, the phone/mobile number of the girl-friend of the accused, named Saima Sareen, had been switched off and the police had done nothing to trace her out.

31. *Inter alia*, the complainant submits that the applicant/accused concealed having applied for bail in the Trial Court 3 to 4 times and the same getting dismissed.

32. The complainant further submitted that the chargesheet had been filed without dealing with/investigating the important issues/matters in the present matter, and have not even investigated the messages/ phones which could brought some lead to the case.

33. *Inter alia*, the complainant submits that the witnesses involved in the matter are relatives of the accused as they are in laws and there is likelihood that they would be approached and would be pressurized to turn hostile with the help of the children of the accused, who are maternal grand-children of the witnesses.

34. Placed on record of the petition is also the copy of the chargesheet, in which is also placed the statement of the injured (since deceased) Diksha, the wife of the applicant, dated 04.05.2022.

35. On a consideration of the entire available record and rival pleas addressed on behalf of either side, without any observations on the

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merits or demerits of the charges, if any, that are framed or the trial that may take place, it is essential to observe that through her statement dated 04.05.2022 recorded by the Investigating Officer soon after the injuries sustained by the injured (since deceased) on 03.05.2022, she had categorically stated therein to the effect, that she was a post-graduate having done her MA, that she was a housewife living with her family, that she had two children and the applicant herein was her husband, and that for about 2 to 3 days prior to the date 04.05.2022, there had been disputes between her and her husband on household matters and on 02.05.2022, those disputes had been resolved. She further stated through her statement which forms the part of the chargesheet, that on 03.05.2022, in the morning hours, her husband had shared her personal chat with a lady friend, because of which, there was an altercation between her and her husband, as a consequence of which, her husband Upender, i.e., the applicant herein, had poured kerosene on himself and frightened her and that she had gone to save her husband in the kitchen, and there, whilst she was trying to save him, her saree caught fire and her husband at that time pulled her saree away, but when she was trying to save her husband, the kerosene oil on her husband's clothes had fallen on to her blouse and her blouse had caught fire with the gas burner (chulla) and her husband had poured water and saved her, but despite the same, she had sustained injuries on her chest, face and both of her hands had been burnt, whereafter her husband brought her to the hospital, but when they found no place at the Hindu Rao Hospital and BSA, she was then brought to the GTB Hospital, where she was being treated.

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She also stated that she had asked her husband not to inform her family members. She further stated that she had been married to the applicant for twelve years. It is indicated through the said statement recorded that the Investigating Officer had categorically asked the injured (since deceased) whether her husband had burned her and she replied in the negative. The further question put by the Investigating Officer ASI Ram Naresh No.2642/N to the injured (since deceased) was whether after the incident, her husband had put off the fire on her to which she replied in the affirmative. To the query put to the injured (since deceased) by the Investigating Officer, whether there was a CCTV camera at her house, the injured (since deceased) had replied in the affirmative. Significantly, this statement of the injured has been recorded apparently in the presence of the mother of the injured (since deceased) who has also signed this statement.

36. The video call/recording of 4:36 seconds that has been submitted by the State, which the State vide its status report dated 19.09.2022 states that it was taken on the mobile phone of Abhishek Raghav, the brother of the injured (since deceased) at the GTB Hospital on 05.05.2022, reads to the effect:-

“Video Call/recording, Duration 4:36 Sec.

Men	<i>Ab Btao Kya hua Tha, Aapke Sath Mein?</i>
Women	<i>Hum Dono Ka Do Saal Se leke Vivaad Chal Raha Tha, Ye Hyderabad Rehta Hai</i>
Men	Hunn
Women	<i>Hum Akele Rehte Hai, Saas Aur Bachcho Se Sahare, Jab Se Coronakal Hua Hai Iska Baat Karne Ka Tarika Badal Gaya Tha, Mujhe Bataya Gaya lse Kisi</i>

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Musalmani Ke Yaha Ghumna Firna, Baten Karna Aata Hai, Ye Ghar Bhi Udhar Se Baaten Karta Tha Phone Pe ladta Tha, Jab Ye 8 Mahine Baad Ghar Aaya Maine Isse Raat Ko Bahar Bhagte Dekha, Is Kone Mei Kahde Hoke Baat Kar Raha Hai, Us Kone Mei Khade Hoke Baat Kar Raha Hai. At least Maine Video Call Bhi Dekhi, Ye Video Call Pe Bhi Baat Karta Tha, Aur Mere Phochne Pe Hatha Pai Bhi Hoti Thi, Jab Main Sawal Karti Hun Ke Itni Video Call Kyun Hain Kisi Ki, To Bolta Hai Friend Hai, Raat Ko 12-12, 1-1 Baje Kon Friend Hoga Jo Video Call Karegi? Puchne Pe Hatha Paai Hoti Hai, Main Apne Bachon Ko, Chahte Hai K Mere Bachche Achchi Tarha Rahe, Achche Tarha Padhe, Jaise Sab Maa Ka Sapna Hota Hai. Itni Pagal Nai Hun Jo Main Apne Pati Ki Harkaton Pe Nazar Na Rakh Sakun Ke Aaj Ye Ghar Pe Aaya Achche Se Na Hanse Bole, Aur Dusre Se Achchi Tarha Hanse Bole. Ek Galat Shak, Bar Bar Phone Kar Raha Hai Ye Kar Raha Hai. Agar Inke Man Mei Koi Galat Baat Nahi Hoti To Wo ladki Mere Se Baat Karte Huye Kyun Katra Rahi Thi? Aur Hamari Personal Chat Tak Us ladki Ko Bhejdi Jati Hai, Ke Diksha Ese Keh Rahi Thi, Jab K Miya-Biwi Ki Personal Chat Kisi Tisre Bande Ko Nahi Bheji Jani Chahye. Apne Maa-Baap Ko Batao Wo Alag Baat 'Bai, Magar Tisra Person Isme Invole Nahi Hota Miya Biwi Ki Baton Pe. Ek Din Mere Bhai Ki Shadi Ke Bare Mei Hum Dono Mei Itni Baat Bad Gayi Ke Pucho Mat, Reason Wo ladki Hi Thi Aur Kuch Nahi Tha. Ek Din Hamari Khoob Hatha-Pai Hui, Dusre Din Hum Me Normal Ho Gaya Sab Kuch, Teesre Din Isne, Is Bachane Ke Chakkar Mein, Mera Ye Haal Hogaya, Aise Aadmi Ka Kya Vishwas Karun Main. Isne Apne Upar Tarpeen Ka Jo Tel Dala, Wo Tel Mere Upar Bhi Aaya. Magar Meri Saari Mei Aag lag Gayi, Isne Bujhai, Par Wo Taarpeen Ka Tel Blauge Pe Aaya, Is Bachate Bachate Main Khud Hi Jal Gayi. Koi Bhi Aurat Apne Aadmi Ko 'Aanch Aana Pasand Nahi Karti Hai, Chahe Apne Aako, Mai Bas Main To Yahi Chahti Hun Ke Ham Dono, Main Is Rishte Ko Naam Dena Chahti Hun. Chalo Jo Kuch Hua Sahi Hai, Agar Hum Apas Mei Ghar Mei Baith Ke Baaten Karen Na lade To, Isse To Office Se Aane Ke Baad Chai Ke liye Puchho To Bi Chillam Chilli Ke Siwa

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	<i>Kuch Nahi Milta Hai, Chilla-Chilla Ke Padna, Hath Uthana, Badtamizi Karna Ye Fitrat Hai. Par Main Fir Bhi Is Rishte Ko, Ek Bar Apne Bachon Ke liye Bachana Chahti hun aur kuch nahi. Agar aage se mere saath koi bhi durghatna hoti hai, To /ska Jimmewar Yahi Hoga.</i>
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”

the said i.e., as per the status report of the dated 16.08.2022 submitted under signatures of SI Ganshyam No.3434/D, PS Wazirabad, Delhi.

37. The said transcript of the video/call recording categorically states that the applicant had poured Tarpeen oil on himself which also came on to her but her saree caught fire, and that the applicant put off that fire, but that Tarpeen oil had come onto her blouse, and whilst saving the applicant, she herself got burned and that the injured further stated in this conversation that no women would want any injury to her husband though she could herself be injured, and that she wanted to give a name to her relationship with her husband and that she only wanted that they could sit and talk at home and did not fight and that the applicant also used to shout even on returning from office when she asked him for tea, used to assault her, used to quarrel with her and it was his nature to misbehave but still she wanted to save the relationship for the sake of her children for once, and further stated that if there was any future incident, then the applicant would be responsible for the same and her words in the transcript are to the effect:- *“Agar aage se mere saath koi bhi durghatna hoti hai, To iska Jimmewar Yahi Hoga.”*

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38. The audio recording of the date of 20.03.2022, as per the status report dated 19.09.2022 of 7 seconds, 11 seconds and 10 seconds, read to the effect:-

Call duration 7 Sec. Only

Women	<i>Meri Maut Ka Asli Jimmedar, Mera Pati Hai</i>
-------	--

Call duration 11 Sec. Only

Women	<i>Mera Beema Karane Ki wajah Se, Wo Chahte Hain Ki Main Mar Jaaun, usne mera 50 Lakh Ka Beema Kara Rakha hai, aur isliye wo chahta hai ke main mar jaaun</i>
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Call duration 10 Sec. Only

Women	<i>Agar meri maut hoti hai, to meri maut ka zimmedar mera pati Upendar hai, aur ye police station mei de diyo.</i>
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39. On behalf of the complainant and the State, much reliance is sought to be placed on these video/audio recordings of the date 20.03.2022 and 05.05.2022. Significantly, the incident is of the date 03.05.2022 and the cause of the incident is reflected through the statement dated 04.05.2022 of the fire incident of the injured (since deceased), as also recorded in the video recording dated 05.05.2022 recorded by Mr. Abhishek Raghav, the brother of the deceased. The injuries thus sustained by the injured on the date 04.05.2022, as per the statement of the injured dated 04.05.2022 as well as per the video/call recording of 4:36 seconds recorded on 05.05.2022 by Abhishek Raghav, the brother of the injured (since deceased), cannot be attributed to the applicant simplicitor, in as much as, the said statement dated 04.05.2022 of the injured (since deceased) and

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video/call recording dated 05.05.2022 of the injured (since deceased) do not state that the applicant had attempted to injure his wife, the injured (since deceased) in any manner, though the said video/call recording and the statement of the injured (since deceased) do reflect a status of a quarrel in which the applicant had tried to immolate himself and not his wife.

40. The injuries sustained by the injured (since deceased) were burns as already adverted to hereinabove but the injured was fit for statement on 04.05.2022 as recorded as per the MLC of the injured bearing MLC No. E-3102/08/22, A & E No. GTBE-103222 and Serial No.3102 of the Guru Teg Bahadur Hospital, New Delhi.

41. The admission summary of the GTB Hospital CR No. GTB-26176 shows that the injuries sustained by the injured were 30% to 35% burn injuries, that she was admitted to the hospital on 03.05.2022 at 3:21 PM, and that she was in the hospital for eighteen days and was positive for Corona from 12.05.2022 to 19.05.2022, and as per the discharge summary of the GTB Hospital, Dilshad Garden, she was discharged on her request as she was going to another hospital on 21.05.2022, when her poor prognosis had been explained to the attendant. The injured had tested negative for Corona on 18.05.2022, as per the medical record of the GTB Hospital, and was on 19.05.2022 transferred from the Covid Ward to the Burn and Plastic Department of the GTB Hospital.

42. The post-mortem report No.1299/2022 of the Department of Forensic Medicine & Toxicology, Vardhman Mahavir Medical College and Safdarjung Hospital, New Delhi indicates to the effect

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that the injured was taken to the Safdarjung Hospital on 21.05.2022 at 12:15 PM and the during the course of treatment expired on 22.05.2022 at 12:30 PM. The cause of death, as per this post-mortem report is recorded to be *“Death is due to septicemia as a result of ante-mortem infected thermal burns, involving about 25% of total body surface area”*.

43. The brief history as per inquest papers recorded in the post-mortem report No.1299/2022 dated 23.05.2022 is to the effect:-

“Brief History as per Inquest Papers: Alleged history of burn at H.NO. 597, SURENDER COLONY, JHARODA, MAJRA BURARI, DELHI on 03/05/22 as stated by brought by (As per MLC). Deceased was initially taken to Guru Teg Bahadur Hospital, Shahdara, Delhi on 03/05/22 at 02:17 PM. Later on deceased was taken to Safdarjung hospital, New Delhi on 21/05/22 at 12:15PM. Here during the course of treatment deceased expired on 22/05/22 at 12:30PM. As per death summary, alleged history of sustaining thermal burn while the patient self immolated herself with a burning piece of paper. Her clothes caught fire. Fire was doused by her husband using water (History was given by her husband). (Vide Inquest paper no. 1, Outside MLC No. E3102/08/2022, Guru Teg Bahadur Hospital, Shahdara, Delhi, dated: 03/05/22, Death summary, MRD No. 40059, Safdarjung Hospital, New Delhi)”.

44. The death summary dated 22.05.2022 of the injured (since deceased) gives the history (mode of injury) to be

“History (Mode of injury): A/H/O sustaining thermal burns while the patient self immolated herself with a burning piece of paper. Her clothes caught fire. Fire was doused by her husband using water. (History was given by her husband) Patient was referred from GTB hospital.”

45. Undoubtedly, the version which is mentioned in the history (mode of injury) in the death summary is at total variance with the version put forth through the FIR, and through the video call/recording of 4:36 seconds of the date 05.05.2022 of the recording of the

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conversation made by the injured (since deceased) and is also at variance with the statement of the injured (since deceased) dated 04.05.2022 and has in fact not been urged by any side during the course of submissions made. The said history (mode of injury) mentioned in the death summary dated 22.05.2022 of the deceased does raise a suspicion against the applicant in relation to the patient the injured (since deceased) having immolated herself with a burning piece of paper when her clothes caught fire, which was doused by her husband with water, as per the history given by the applicant as per the death summary.

46. The said version put forth by the applicant during the course of the preparation of the death summary could be to protect himself but it would not be appropriate at this stage for this Court to enter into the realm of speculation. Thus as per the statement dated 04.05.2022 of the injured as well as the video/call recording of the conversation dated 05.05.2022 of the injured, coupled with the factum that the call recordings of the date 20.03.2022 are much before the date of the incident i.e., 03.05.2022, when a very different version has been put forth allegedly by the injured (since deceased), coupled with the factum that the variant versions put forth through the statement dated 04.05.2022 of the injured (since deceased) and the death summary dated 22.05.2022 in relation to the cause of the fire to the clothes of the injured (since deceased), are aspects which can only be determined on trial.

47. The cause of death of the deceased is indicated to be septicemia as a result of ante-mortem infected thermal burns, involving about

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25% of total body surface area but injuries sustained by the injured *per se* do not appear to have been fatal with there being 30% to 35% of burns caused to the injured.

48. The allegations levelled against the applicant relate to the alleged commission of the offence punishable under Section 306 of the Indian Penal Code, 1860 which relate to the abetment of the commission of suicide by the injured (since deceased), and as per the version put forth through the statement dated 04.05.2022 of the injured (since deceased) and the recording of the video dated 05.05.2022 by Mr. Abhishek Raghav, the brother of the deceased, it is not stated therein that the injured (since deceased) had tried to immolate herself.

49. The ingredients of the alleged commission of the offence punishable under Section 306 of the Indian Penal Code, 1860 read with Section 107 of the Indian Penal Code, 1860 which read to the effect:-

“Section 107 Abetment of a thing.

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.

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.”,

do not appear to be attracted in the instant case thereby. **The version put forth through the death summary dated 22.05.2022 that the clothes of the injured (since deceased) caught fire when she**

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immolated herself with a burning piece of paper, is stated to be the version put forth by the applicant at the VMCC and Safdarjung Hospital, New Delhi on 21.05.2022.

50. Placed on record is a statement under Section 161 of the Cr.P.C, 1973 of Mansbi, the daughter of the applicant and the injured (since deceased), dated 12.06.2022, wherein she states that she did not recall the date but it was a holiday for her in view of Eid (the date of the incident is 03.05.2022 when as per the Calendar of this Court it was Id-ul-Fitr), wherein the child has stated that, that morning, her mother had telephoned her maternal grandmother and her mother was shouting at her maternal grandmother and was also using abuses and after the phone was disconnected, there was a quarrel between her father (the applicant herein) and her mother, the injured (since deceased), and then her mother went to her room, broke her bangles and started rubbing them on her hand and her father had caught hold of a knife and was sharpening the same and her mother went out saying that she was going to complain to the police, and that her mother brought Tarpeen oil and she kept the bottle in the store and, on that date, her father took out that bottle from the store and first put the same on himself, and that her father was wearing a vest and a knicker and her mother snatched the bottle from the applicant and poured the remaining Tarpeen on herself, and her mother went into the kitchen and the saree pallu caught fire and her mother took off the pallu and her father poured the water in the bucket which was in the kitchen on her mother and put out the fire, whereafter her mother took a paper and lit it from the gas burner and started saying that she would burn

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her blouse and then her father asked her not to and folded his hands and told her '*Diksha aisa mat kar*' but her mother had lit the fire and she, i.e., Mansbi, the daughter of the applicant and the injured (since deceased), and her father went to the bathroom and there was very little water coming, and whatever little water they could collect, they put it on her mother, and that the injured (since deceased) also came into the bathroom, and that Mansbi came out of the bathroom but her father continued to remain in the bathroom and her father was in the washroom with only his knicker, as a consequence of which, her father also caught fire and her father threw his undergarment, as a consequence of which, he was not burnt a lot. The child who stated that she was studying in Standard IV stated that about previous quarrels between her parents, she knew that they used to fight for five to ten minutes and then used to be at peace, though she did not know why the quarrels took place.

51. As per the version put forth through the statement dated 12.06.2022 of the child Mansbi, the daughter of the applicant and the injured (since deceased), there is nothing to indicate any overt act attributable to the applicant *prima facie* to abet the injured (since deceased) to immolate herself. The variant versions that have been set forth through the prosecution version as detailed hereinabove will apparently have to be subjected to trial on the anvil of cross-examination of testimonies of prosecution witnesses on oath. The FSL result in relation to the video recordings seized and the CCTV footage is also yet awaited as per the prosecution version.

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52. In the circumstances, it is considered appropriate to release the applicant on bail on filing a bail bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties of the like amount to the satisfaction of the learned Trial Court with directions to the applicant to the effect that:-

- he shall not leave the city of Delhi without the permission of the learned Trial Court;
- he shall under no circumstances leave the country and shall surrender his passport if he possesses any to the learned Trial Court with further intimation being given to the FRRO by the Investigating Agency that the applicant shall not leave the country;
- he shall keep his mobile phone on at all times;
- he shall drop a PIN on the google map to ensure that his location is available to the Investigating Officer of the case;
- he shall not commit any offence whatsoever during the period that he is on bail in the instant case in relation to FIR No.424/2022, PS Wazirabad, under Section 306 of the Indian Penal Code, 1860;
- in the event of there being any FIR/DD Entry/complaint lodged against the applicant, it would be open to the State to seek cancellation of bail of the applicant, which application, if any filed by the State, shall be dealt with on its own merits.
- he shall not intimidate the prosecution witnesses in any manner.

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53. The application is disposed of accordingly.

ANU MALHOTRA, J.

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