

**Neutral Citation No. - 2023:AHC:203895**

**Reserved On:- 10.10.2023**

**Delivered On:- 26.10.2023**

**Case :- CRIMINAL MISC. BAIL APPLICATION No. - 40131 of 2023**

**Applicant :- Sachin And Another**

**Opposite Party :- State of U.P.**

**Counsel for Applicant :- Irshad Husain,Atharva Dixit,Sr. Advocate**

**Counsel for Opposite Party :- G.A.,Ishwar Chandra Tyagi**

**Hon'ble Siddharth, J.**

1. Heard Sri Manish Tiwari, learned Senior counsel assisted by Sri Irshad Husain and Sri Atharva Dixit, learned counsel for the applicants; Sri Ishwar Chandra Tyagi, learned counsel for the informant and Sri G.N. Kanaujia, A.G.A-I for the State.

2. There is allegation in the FIR that the informant, Munesh Devi, arranged marriage of her daughter with applicant no. 1, Sachin Kumar, but after initial ceremony of engagement on 07.05.2023, younger brother of the applicant no. 1, applicant no. 2, Ankit, and on the direction of applicant no. 1 and his father, Ram Avtar, started demanding tractor and Rs. 2 lakhs as additional dowry on 09.05.2023 from the informant and her husband. Since the marriage of her daughter with the applicant no. 1, Sachin was fixed for 13.05.2023, she informed that she cannot make arrangement of additional dowry within such a short time. Applicant no. 2 stated that unless their demand of additional dowry is met they will not come with *barat*. It is alleged in the FIR that Rs. 19 lakhs along with a car had earlier been given in dowry to the accused. On account of aforesaid conduct of the accused, the husband of informant committed suicide on 10.05.2023 and FIR was lodged on the same day. Initially, FIR was lodged under

Section 3/4 of Dowry Act only and implication under Section 306 IPC was subsequently made. A suicide note was later recovered by the investigating officer. The deceased committed suicide by jumping before running a train. In the suicide note allegedly recovered it was mentioned that marriage of daughter of the deceased with applicant was fixed with the son of co-accused, Ram Avtar. Initially, dowry of Rs. 15 lakhs was demanded to which the deceased agreed but thereafter demand started increasing. On 07.05.2023 he arranged about Rs. 19 lakhs and performed the ceremony of “*lagan*”. On 09.05.2020, applicant no. 2, Ankit, came to his house and stated that if a tractor is not provided till day after tomorrow i.e., on 11.05.2020, they will not come with *barat*. In such circumstances, the deceased committed suicide. Dead body of the deceased was recovered in two pieces after being run over by train.

3. Learned Senior counsel for the applicant submits that it is a case of false implication. The alleged suicide note recovered from the motorcycle of the deceased is highly doubtful. It was planted only to falsely implicate the applicants. The allegation of demand of dowry has been made against applicant no. 2, Ankit, only that he went to the house of deceased and the informant and demanded additional dowry but it is not alleged in FIR. Report of F.S.L expert has not been received regarding the suicide note recovered. The case of abetment of suicide is not made out against the applicants. Reliance on the judgments of the Apex Court in the following cases have been made by the learned Senior Counsel in support of his contentions :-

(i) *Netai Datta vs. State of West Bengal (2005) 2 SCC 659*

(ii) *Sanju vs. State of M.P. (2002) 5 SCC 371*

(iii) *Amalendu Pal vs. State of West Bengal (2010) 1 SCC 707*

(iv) *Shabbir Hussain vs. State of Madhya Pradesh in Special Leave to Appeal (Crl.) No. 7284 of 2017*

(v) *Geo Varghese vs. State of Rajasthan 2021 SCC Online SC 873*

(vi) *Sate of West Bengal vs. Indrajit Kundu and others (2019) 10 SCC 188*

(vii) *State of Kerala and Others vs. S. Unnikrishnan Nair and others (2015) 9 SCC 639*

4. Learned counsel for the informant and learned A.G.A have vehemently opposed the bail application. They have submitted that marriage of the daughter of the informant and deceased was fixed on 13.05.2023 and additional demand of dowry was made on 09.05.2023 to be fulfilled by 11.05.2023. Deceased had already made arrangement of Rs. 19 lakhs and paid it to the applicants and their father. The deceased was not in a position to arrange further amount of Rs. 2 lakhs and further amount for purchasing a tractor within two days and it was made clear to him by applicant no. 2 that marriage of his daughter will not take place unless he makes arrangements of the aforesaid amount and a tractor. Fearing social ignominy and disrepute in society and also fearing about the future of his daughter, the deceased committed suicide by jumping before a running train leaving behind a suicide note. Even if suicide note is ignored, facts of the case clearly prove that accused persons had created such situation for deceased that he was left with no other option but to commit suicide. They have submitted that case laws relied upon by the learned counsel for the applicants have no relevance to facts and circumstances of the present case. Therefore, applicants do not deserve to be enlarged on bail.

5. After hearing the rival submissions, this court finds that there is no dispute regarding the facts of the case except that there is no FSL report regarding the suicide note allegedly recovered from the motorcycle of the deceased. The Apex Court in the case of *Netai Dutta (supra)* found that the deceased committed suicide because he was transferred by the employer to another place but he did not joined his duties for two years and submitted resignation complaining about stagnation in pay and unsatisfactorily working conditions. The Apex Court did not found the offence under Section 306 IPC made out against accused on the ground that there was no allegation made against the applicant no. 2 of abetting suicide of the deceased when the applicant no. 2 was his employer. In case of *Sanju (supra)* the dispute took place between the deceased and the accused at the spur of moment and accused allegedly uttered that the deceased should go and die. Apex Court after considering the other facts, like the deceased used to indulge in drinking and was not doing any work, held that offence under Section 306 IPC is not made out. The case of *Amlendu Pal (Supra)* relates to objection to extra-marital relationship of the accused by his wife resulting in suicide by the wife which is also not relevant for deciding the present case. In the case of *Shabbir Hussain (supra)* there was only allegation of harassment and nothing more and hence the implication under Section 306 IPC was found unwarranted. In the case of *Geo Varghese (supra)* student committed suicide after being hurt by conduct of his school teacher. The Apex Court did not found implication of the deceased under Section 306 IPC to be justified. In the case of *State of West Bengal (supra)* victim was called a “call girl” hence she committed suicide. The case of *State of Kerala (supra)* is also not relevant for deciding present case.

6. The Apex Court in the case of *Ude Singh and Ors. vs. State of Haryana, 2019 AIR (SC) 4570*, has considered the issue of abetment of suicide as follows:-

*“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.*

*16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.*

*16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self-confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.*

7. A perusal of the aforesaid judgment of the Apex Court shows that mere allegation of harassment of the deceased by another person would not be considered as abetment of suicide unless the offending action is proximate to the time of occurrence. In the present case, the initial ceremony of *lagan* of the daughter of deceased with applicant no. 1 took place on 07.05.2023. On 09.05.2023 it is alleged that applicant no. 2, Ankit, went to the house of deceased and made further demand of additional dowry in the form of a tractor and Rs. 2 lakhs. He gave deadline for fulfilling the demand on 11.05.2023. The deceased was unable to arrange tractor and Rs. 2 lakhs in short time of 2 days and marriage of applicant no. 1 was to take place on 13.05.2023 with the daughter of the deceased. The deceased was unable to cope up with the pressure created by such a demand made by applicant no. 2 on 09.05.2023 and he committed suicide on 10.05.2023, the next day.

8. The Apex Court has held in paragraph 16.1 of the judgment aforesaid that if the accused plays actual role in tarnishing self-respect and self-esteem of the victim which compelled her to commit suicide, accused may be held guilty of abetment of suicide. In the present case, the deceased was unfortunate father of a girl who was to be married on 13.05.2023 to the applicant no. 1 and he had made arrangements and paid alleged dowry of about 19 lakhs in advance. The additional demand of

dowry in the form of a tractor and Rs. 2 lakhs in cash was beyond the capacity of the deceased and he was simply incapable of making arrangement of additional dowry within two days and hence finding no way out and fearing social disrepute and ignominy resulting from non-solemnization of marriage of daughter and also fearing about future of his daughter to be married with applicant no. 1, he reacted in extreme manner and committed suicide. The Apex Court has held that each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and deceased.

9. In paragraph 16.02 of the judgment aforesaid, the Apex Court has held that reaction of different persons is different to a particular situation. In the present case, the deceased resorted to the commission of suicide since he felt that his life, his self-esteem and future of his daughter are at stake and embracing death appeared to him to be the only solution and only way out for him from the peculiar unfortunate situation wherein he was placed by the conduct of applicants and co-accused, Ram Avtar, particularly the applicant no. 2.

10. In view of the above consideration, it is clear that there is direct allegation against applicant no. 2 of demanding additional dowry from the deceased as a pre-condition for marriage of applicant no. 1 with daughter of the deceased. There is no such direct allegation against applicant no. 1. Hence, bail application regarding applicant no. 1 deserves to be allowed.

11. Keeping in view the nature of the offence, evidence, complicity of the accused; submissions of the learned counsel for the parties noted above; finding force in the submissions made by the learned counsel for the applicants; keeping view the uncertainty regarding conclusion of trial; one sided investigation by police, ignoring the case of accused side;

applicants being under-trial having fundamental right to speedy trial; larger mandate of the Article 21 of the Constitution of India; considering the dictum of Apex Court in the case of ***Satendra Kumar Antil vs. C.B.I., passed in S.L.P (Crl.) No. 5191 of 2021***; considering 5-6 times overcrowding in jails over and above their capacity by the under trials and without expressing any opinion on the merits of the case, the Court is of the view that the applicant no. 1 has made out a case for bail. The bail application of applicant no. 1 is allowed.

12. Let the applicant no. 1, Sachin, involved in Case Crime No. 207 of 2023, under Sections- 306 IPC and Section 3/4 of D.P. Act, Police Station- Amroha, Dehat, District- Amroha, be released on bail on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned subject to following conditions. Further, before issuing the release order, the sureties be verified.

(i) The applicant shall not tamper with the evidence or threaten the witnesses.

(ii) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in Court. In case of default of this condition, it shall be open for the Trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law.

(iii) The applicant shall remain present before the Trial Court on each date fixed, either personally or as directed by the Court. In case of their absence, without sufficient cause, the Trial Court may proceed against him under Section 229-A of the Indian Penal Code.

(iv) In case the applicant misuses the liberty of bail during trial and in order to secure his presence, proclamation under Section 82 Cr.P.C. is issued and the applicants fail to appear before the Court on the date fixed

in such proclamation then the Trial Court shall initiate proceedings against him in accordance with law under Section 174-A of the Indian Penal Code.

(v) The applicant shall remain present in person before the Trial Court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 313 Cr.P.C. If in the opinion of the Trial Court absence of the applicants are deliberate or without sufficient cause, then it shall be open for the Trial Court to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

13. In case, of breach of any of the above conditions, it shall be a ground for cancellation of bail.

14. Identity and residence proof of the applicant and sureties be verified by the court concerned before the bonds are accepted.

15. Prayer for bail on behalf of applicant no. 2 is declined.

16. Prayer for bail of applicant no. 1 is accepted.

17. The bail application is partly allowed.

**Order Date :- 26.10.2023**

Rohit