

Court No. - 72

Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION U/S
438 CR.P.C. No. - 11296 of 2023

Applicant :- Sakshi

Opposite Party :- State of U.P.

Counsel for Applicant :- Arvind Agrawal, Adya Shankar
Chaturvedi, Satya Prakash Rai

Counsel for Opposite Party :- G.A.

Hon'ble Krishan Pahal, J.

1. Heard Sri Arvind Agrawal, learned counsel for the applicant and Sri Himanshu Mishra, learned counsel for the informant as well as Sri Sunil Kumar, learned AGA for the State and also perused the material available on record.

2. The instant anticipatory bail application was filed by the applicant seeking anticipatory bail in Case Crime No.566 of 2023, U/S 323 & 306 of IPC, Police Station Highway, District Mathura, during the pendency of trial.

PROSECUTION STORY:-

3. As per prosecution story, the applicant, who happens to be the wife of the deceased person, along with other family members are stated to have assaulted and beaten up the deceased person on 31.05.2023 at about 09:00 PM. They are even stated to have threatened him on 01.06.2023 and instigated him to commit suicide, as such, the son of the informant committed suicide on 02.06.2023 before 05:30 AM.

RIVAL SUBMISSIONS:-

4. Learned counsel for the applicant has stated that the applicant has been falsely implicated in the present case. She has nothing to do with the said offence. The cause of death has been found to be asphyxia due to ante mortem hanging, although, certain injuries were observed on the body of the deceased person by the doctor conducting autopsy. Learned counsel

has further stated that there is no proximity between the time of death and the instigation, as such, the applicant cannot be assigned the role of having abetted the deceased person to commit suicide.

5. Learned counsel for the applicant has placed much reliance upon paras- 11, 12 & 16 of the judgement of Apex Court passed in Gangula Mohan Reddy Vs. State of Andhra Pradesh, (2010) 1 SCC 750 and the same are reproduced hereunder:-

"11. The learned counsel for the appellant has placed reliance on a judgment of this Court in Mahendra Singh v. State of M.P. [1995 Supp (3) SCC 731]. In Mahendra Singh, the allegations levelled were as under:

"1. ... My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I want to die by burning."

The Court on the aforementioned allegations came to a definite conclusion that by no stretch the ingredients of abetment are attracted on the statement of the deceased. According to the appellant, the conviction of the appellant under Section 306 IPC merely on the basis of the aforementioned allegation of harassment of the deceased is unsustainable in law.

12. The learned counsel also placed reliance on another judgment of this Court in Ramesh Kumar v. State of Chhattisgarh [(2001) 9 SCC 618] . A three-Judge Bench of this Court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in para 20 has examined different shades of the meaning of "instigation". Para 20 reads as under:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

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16. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) [(2009) 16 SCC 605 : (2009) 11 Scale 24] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances."

6. Learned counsel for the applicant has also placed reliance upon para-15 of the judgement of Apex Court passed in Velladurai Vs. State represented by the Inspector of Police, 2021 SCC OnLine SC 715 and the said para reads as under:-

"15. 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 IPC."

7. Learned counsel for the applicant has also stated that no ingredients of Section 306 IPC are attracted as the deceased had committed suicide in his own paternal home and at that time, the applicant was at her maternal home and, as such, the applicant is entitled for anticipatory bail.

8. Per contra, learned counsel for the informant as well as learned A.G.A. have vehemently opposed the prayer for anticipatory bail of the applicant on the ground that the deceased person while committing the suicide had got it video recorded. Learned counsel has also stated that ingredients of instigation stand fulfilled in the FIR itself as the applicant

was the main accused being the wife of the deceased person and had led him to commit suicide. Several injuries were found on the body of the deceased person and there is close proximity between the instigation and suicide, therefore, the applicant is not entitled for anticipatory bail.

CONCLUSION:-

9. I have gone through the judgements of the Apex Court relied upon by the learned counsel for the applicant. As far as the judgement of Gangula Mohan Reddy (supra) is concerned, the said judgement do not apply to the present case as in the said case, there was no instigation or abetment directly to the deceased person to commit suicide. Now, coming to the judgement of Velladurai (supra), both the deceased person and the appellant therein had consumed noxious material for committing suicide, as such, this judgement does not help the case of the applicant at all. Every case law is based on its own facts and circumstances, as such, it cannot be applied empirically to every case.

10. Considering the rival submissions advanced by the learned counsel for the parties, judgements relied upon by the learned counsel for the applicant and also taking into consideration the fact that there is a video recording of commissioning of suicide by the deceased person, I do not find it a fit case to grant anticipatory bail to the applicant.

11. The present anticipatory bail application is, accordingly, **rejected**.

12. It is clarified that the observations made herein are limited to the facts brought in by the parties pertaining to the disposal of anticipatory bail application and the said observations shall have no bearing on the merits of the case during trial.

(Justice Krishan Pahal)

Order Date :- 12.10.2023

Siddhant