



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**Criminal Misc. No. M-31525 of 2024
Date of decision :-04.12.2024**

Ajay Kumar**.....Petitioner****Versus****U.T. Chandigarh****.....Respondent****CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Aashna Aggarwal, Advocate,
Mr. Vishal Pundir, Advocate
for the petitioner.

Mr. Anil Kumar Lamdharia, Addl. P.P. for UT
Chandigarh.

NIDHI GUPTA J. (Oral)

The petitioner is seeking anticipatory bail in FIR No.35
dated 13.3.2024 (Annexure P-1) under Section 306 IPC, registered at
Police Station West, Sector 11, Chandigarh.

On 12.7.2024, this Court had passed the following order

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*“Prayer in this petition filed under Section 438
Cr.P.C. is for grant of anticipatory bail to the petitioner
in case FIR No.35 dated 13.3.2024 (Annexure P-1) under
Section 306 IPC, registered at Police Station West,
Sector 11, Chandigarh.*

*Learned Senior Counsel appearing on behalf of
the petitioner, inter alia, submits that the petitioner has
been serving in various capacities in the Post Graduate
Institute of Medical Education and Research (PGIMER)*



Chandigarh for the last 36 years. Since 28.08.2012 the petitioner has been working as Tutor Technician in the Radiology Department, which is a teaching assignment post. Additionally, the petitioner was also incharge of the Advance Trauma Centre (ATC) & Emergency. Besides the above duties, the petitioner was also required to maintain the stock registers, care and maintenance of the equipments, et cetera, and sub store of ATC and Emergency sections. The wife of the petitioner has also been serving in the PGIMER for the past 38 years and is presently posted as Technical Assistant.

It is submitted that although the deceased was also posted in the Radiology Department, however, the cadre of the petitioner was different from the deceased - inasmuch as, the petitioner belonged to the teaching cadre as he was a Tutor Technician, incharge of the Advance Trauma Centre/ATC and Emergency; whereas the deceased was of the technical cadre as she was working as a Supervisor (Radiographer) and was incharge of Advance Pediatric Centre/APC and Advance Cardiac Centre/ACC. By virtue of her position, the deceased was custodian of all the Radiology equipment/machines in her section i.e. APC and ACC.

Vide order dated 30.08.2022 (Annexure P-3) passed by the Head of the Department of Radio Diagnosis, upon the retirement of the previous incumbent, and on the basis of seniority, the petitioner was given the charge/ Chief Technical Office Incharge of the ultrasound machines and various other equipments in the Department.

Vide order dated 14.2.2024 (Annexure P-4) circulated to all concerned, including the petitioner and the deceased and three other persons, the Head of the Department of Radio diagnosis, PGIMER, sought "the



updated list of ultrasound units along with probes and their serial numbers after physical verification by 20th February 2024”.

It is submitted that it transpired that one probe of which the deceased was custodian, was not being accounted for. As per the knowledge of the petitioner, the deceased had also written to the HOD, Radiology, PGI in this regard. As such, the Head of the Department of Radio diagnosis & Imaging PGIMER, Chandigarh wrote a letter dated 23.2.2024 (Annexure P-5) to the service providers and vendors of the said machines to provide relevant information/service reports to the PGIMER in respect of the ultrasound machines and their transducers.

Simultaneously, vide another order dated 23.2.2024 (Annexure P-6) HOD, Radiology, PGI directed the petitioner's wife to move from OPD to APC Radiology Section and to take charge from 05.3.2024 onwards; and the deceased was transferred from APC to OPD Radiology Section and was directed to take charge from 06.3.2024 onwards.

Ld. Senior Counsel submits that it is to be noted that after passing of the said order dated 23.2.2024 (Annexure P-6) and prior to the petitioner's wife taking charge from the deceased on 05.3.2024, the deceased sent a WhatsApp message dated 04.3.2024 (Annexure P-8) to the petitioner, from which it was clear that the deceased was mentally disturbed even prior to the charge takeover by the wife of the petitioner.

*Learned Senior Counsel for the petitioner has referred to the judgment of the Supreme Court in **Prabhat Kumar Mishra @ Prabhat Mishra vs. The State of U.P. &Anr. 2024 AIR (Supreme Court) 1405,***



the relevant para-Nos.22 and 23 of the same are reproduced as follows :-

“xxx xxx xxx

22. It is not in dispute that the prosecution case is entirely based on the suicide note left behind by the deceased before committing suicide. On a minute perusal of the suicide note, we do not find that the contents thereof indicate any act or omission on the part of the accused appellant which could make him responsible for abetment as defined under Section 107 IPC.

23. We have minutely perused the suicide note (reproduced supra) which clearly shows that the deceased was frustrated on account of work pressure and was apprehensive of various random factors unconnected to his official duties. He was also feeling the pressure of working in two different districts. However, such apprehensions expressed in the suicide note, by no stretch of imagination, can be considered sufficient to attribute to the appellant, an act or omission constituting the elements of abetment to commit suicide. The facts of the case at hand are almost identical to the case of Netai Dutta (supra). Thus, we have no hesitation in holding that the necessary ingredients of the offence of abetment to commit suicide are not made out from the chargesheet and hence allowing prosecution of the appellant is grossly illegal for the offences punishable under Section 306 IPC and section 3(2)(v) of the SC/ST Act tantamounts to gross abuse of process to law.

xxx xxx xxx”

*Learned Senior counsel for the petitioner also placed reliance upon the judgment dated 06.5.2024 passed by a co-ordinate Bench of this Court in **Sushil Kumar @ Sushil Yadav & Another vs. State of Haryana***



& Another in CRM-M-41891-2023 and refers to para 13 of the same, which reads as follows :-

“xxx xxx xxx

13. A perusal of the aforementioned judgments would show that to constitute abetment, there must be a proximate and live link between the occurrence and the subsequent suicide inasmuch as the instigation or illegal act of omission or commission at the hands of the accused must be the only factor which subsequently led the deceased to commit suicide. To constitute abetment, the intention and involvement of an accused to aid or instigate the commission of suicide is imperative. There must be a positive act on the part of an accused to aid or instigate the deceased to commit suicide. Further, merely being named in a suicide would not by itself establish the culpability of an accused until the ingredients of an offence are made out.

xxx xxx xxx”

Learned Senior Counsel, accordingly, prays for grant of interim relief to the petitioner and undertakes that the petitioner will join the investigation and co-operate with the Investigating Agency.

Notice of motion.

On asking of the Court, Mr. Anil Kumar Lamdharia, Addl. P.P. for UT Chandigarh accepts notice on behalf of respondent-UT Chandigarh; and Mr. H.P.S. Ishar, Advocate has put in appearance on behalf of complainant and filed Power of Attorney, which is taken on record.

Vide last order dated 05.7.2024 this Court had directed the respondent-UT Chandigarh to file Status Report in the matter. In compliance, learned counsel for the UT Chandigarh has filed the Status Report dated



12.7.2024 by way of affidavit of Gurmukh Singh, Deputy Superintendent of Police, Sub-Division Central, Chandigarh. The same is taken on record. Copy thereof is supplied to the counsel opposite.

Learned counsel for the respondent-UT Chandigarh with the assistance of learned counsel for the complainant/husband of the deceased opposes the prayer made on behalf of petitioner and submits that on 05.3.2024 when wife of the petitioner went to take charge in the Advanced Pediatrics Centre (APC) the petitioner was accompanying his wife and they both together humiliated and harassed the deceased to such an extent that she committed suicide on 11.3.2024. It is submitted that it is for this reason that the deceased has specifically named the petitioner in her suicide note. It is contended that the question should be asked as to why only the petitioner has been named by the deceased in the suicide note? From the above, it is evident that the petitioner has a role to play in the suicide of the deceased, and accordingly he should not be granted the concession of pre-arrest bail as his custodial interrogation is very much required. It is however, admitted by learned Counsel that, although it has been stated by the deceased in the suicide note that she was under pressure for the last 10 days, but there was no information/message/complaint received from the deceased in this regard to the effect that the petitioner or his wife, had at any time, harassed her. It is also admitted that the suicide note is undated.

Learned counsel for the UT further submits that although the house and the official address of the petitioner have been raided at various times, however, no clue of the petitioner has been found so far. It is argued that therefore, the petitioner is evading arrest.



Learned counsel for the complainant also opposes the prayer made on behalf of petitioner and additionally submits that the petitioner and his wife are involved in embezzling equipments from the PGIMER and in this regard they were instigating the deceased to tamper with the record, because of which she was mentally harassed and was ultimately forced to commit suicide. It is submitted that even after registration of the FIR the petitioner and his wife are tampering with the evidence and are obstructing the process of law. It is also alleged that previously also an FIR was registered against the petitioner but being an influential person, the petitioner has 'managed' the said FIR with the police authorities. However, no details are forthcoming in this regard.

I have heard learned counsel for the parties and gone through the case file carefully. The date of incident is 11.3.2024. The present FIR came to be registered on 13.3.2024 on the basis of statement of even date of the husband of the deceased, where in he has named six persons as accused including the petitioner and his wife, and one unknown accused i.e. total seven accused.

It has been argued on behalf of the respondents that the deceased was harassed by the petitioner and his wife when the wife went to take charge on 5.3.2024. It has been submitted that it is for this reason that the petitioner has been named in the suicide note. However, it is my view that the deceased had exhibited mental disturbance even prior to the wife of the petitioner taking charge of the APC Section on 5.3.2024. This is evident from the following WhatsApp message dated 04.3.2024 (Annexure P-8) sent by the deceased to the petitioner wherein she has talked of death, of taking VRS, and in fact, she has sought help from the petitioner.



“Good morning sir I am in great pain sir if I do anything good for you please consider it and forgive me if I do anything wrong so pl let me go peacefully I don't want to continue anymore I quit it I don't want to die for sake of God make me free to move out of this game.you always says that you will help me and stands by me when I will be in problem so this is the time to help me so let me go with out any issue please please help me out from this hard time I don't want, to continue I want my VRS let me go with out any enquiry please.I could not sleep the whole night sir I want to sleep without any stress so bring me out from this hard time this is the last time! Say you something asea na ho kerahu he na may kush kehney ko! Want to live for my kids so let me go. peacefully thanks.

If possible give me leave today so I can sleep Sir Arun sir is also on leave till 7.3.24.”

In the suicide note the deceased has also stated that she was ‘under pressure for the last 10 days’ and that the petitioner is ‘responsible for my condition’. However, as noted above, it has been admitted by learned counsel for the respondents that there was no information/message/complaint received at any time from the deceased to the effect that the petitioner or his wife, had harassed her. Even in the status report, it is nowhere stated that the humiliation of the deceased, allegedly over 10 days, was witnessed by anyone. Moreover, the suicide note is undated; and was recovered from the complainant/husband of the deceased two days after the incident.

It is the prima facie view of this Court that ‘The essential ingredients of the offence under section 306 IPC are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abetting the deceased to



commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under section 306 IPC.”
Reference: M. Arjunan versus State, represented by its Inspector of Police, (2019) 3 SCC 315.

It is also relevant that: “Abetment involves a mental process of instigating a person or intentionally adding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. there has to be a clear mens reo to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide that act must have been intended to push the deceased into such a position that he committed suicide”. Reference: SSG versus Vijay Kumar Mahajan and another (2010) 12 SCC 190.

In any event, the matter is still at the stage of investigation. In view of the above, no ground is made out at this stage to deny the concession of anticipatory bail to the petitioner. Bail, not jail, is the rule expounded by the Hon’ble Supreme Court in the landmark ruling in State of Rajasthan, Jaipur v. Balchand, (SC) : Law Finder Doc Id # 105856.

Adjourned to 04.12.2024.

In the meantime, the petitioner is directed to appear before the SHO/Investigating Officer to join investigation and in the event of his arrest, he shall be released on interim bail on his furnishing bail bonds to the satisfaction of SHO/Investigating Agency subject to



the following conditions as envisaged under Section 438(2) Cr.P.C.:-

- i) that the petitioner shall make himself available for interrogation before the Investigating Officer as and when required ;*
- ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer ;*
- iii) that the petitioner shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.*

Meanwhile, State counsel is directed to file an affidavit as to the exact role of the petitioner alongwith the details of pending FIRs, if any, on or before the next date of hearing.

It is, however, made clear, that nothing stated here in above shall be construed to be an expression of opinion on the merits of the matter.”

Learned counsel for the petitioner submits that in compliance of the afore said order, the petitioner has joined the investigation.

Learned State counsel, on instructions from the Investigating Officer states that in terms of the order passed by this Court, reproduced above, the petitioner has joined the investigation on 24.7.2024 and is cooperating.

In view of the above, the order dated 12.7.2024 granting interim bail to the petitioner is made absolute.

However, the petitioner shall abide by the conditions stipulated under Section 438(2) Cr.P.C. He shall also join the



investigation and cooperate with the investigating agency in case he is required for the same in future as and when called upon to do so.

In case at any given point of time hereinafter, it is felt by the investigating agency that the petitioner is required for the investigation but is not cooperating, they will be at liberty to approach this Court for passing appropriate orders.

The petition stands disposed of.

December 04, 2024
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No