

Neutral Citation No. - 2024:AHC-LKO:662

Court No. - 12

**Case :- CRIMINAL MISC. BAIL APPLICATION No. -
15393 of 2023**

Applicant :- Kajal

**Opposite Party :- State Of U.P. Thru. The Secy. Home
Deptt., Lko.**

Counsel for Applicant :- Sunil Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the applicant, Sri Baljeet Singh, learned counsel for the informant as well as learned A.G.A. and perused the record.

2. In terms of the F.I.R. in question, it was stated that the son of the informant was went missing from 28.09.2023, subsequently his body was recovered on 30.09.2023 from a canal. It was apprehended in the F.I.R. that the son of the informant was killed by his wife namely Kajal and his father in law namely Ram Chander alias Shambhu as well as other family members named in the F.I.R.

3. The counsel for the applicant argues that the victim had given a statement on 28.09.2023 alleging that his in-laws were harassing him and in fact had siphoned of certain goods which were belonging to the deceased, which revealed that he was facing harassment at the

instance of the matrimonial family. The counsel for the applicant draws my attention to the cause of death as revealed in the post mortem report, which reveals Asphyxia due to ante mortem drowning. He argues although the initial FIR was registered under Section 302 IPC, subsequently, the applicant is being implicated under Section 306 IPC. In the light of the said, the main submission of the counsel for the applicant is that even if the application dated 28.09.2023 is treated to be a complaint at the instance of the deceased, the same would not qualify to be abetment as defined under Section 107 IPC, he places reliance on the judgment of the Supreme Court in the case of ***Mariano Anto Bruno & Another Versus The Inspector of Police, 2022 SCC Online SC 1387***, wherein the Supreme Court has observed as under:-

26. In order to convict an accused under [Section 306 IPC](#), the state of mind to commit a particular crime must be visible with regard to determining the culpability. With regard to the same, a two-judge bench of this Court in Ude Singh & Ors. Vs. State of Haryana 8 observed as under:-

“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 behavior 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 8 (2019) 17 SCC 301 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.”

27. In the backdrop of the above discussion, we may now advert to the facts of the present case to test whether the conviction of the

Appellants for the offence under Sections 306 and 498A IPC is sustainable or not.

28. The marriage of Appellant No. 1 and the deceased was solemnised in the year 2005 and a male child named “Rosando” was born out of the wedlock in the year 2007. It is pertinent to mention that both, Appellant No. 1 and the deceased are reputed doctors by profession working in the State of Tamil Nadu. There has been no animosity between the families of Appellant No. 1 and the deceased throughout their marriage. Infact, after the marriage, Appellant No. 1 came to know that the deceased was suffering from bipolar disorder. Subsequently he also came to know that she had suicidal tendencies right from her student days and had undergone treatment under a psychiatrist at Thirunelveli, Tamil Nadu.

29. At this stage, it may be relevant to refer to the statement made by Appellant No. 1 under Section 313 Cr.P.C which is as under:

“My wife had mental illness right from her young age. She had undergone treatment several times as an in- patient even while she was studying. She had even attempted suicide several times. They had got her married suppressing the above facts. I became aware of these facts only after the marriage when I confronted my mother-in-law and my wife’s sister regarding the above, my mother-in-law had left for America. It was I who had treated my wife for 9 years thereafter. I had managed to ensure that the effects of the disease are contained to the minimum possible.

She continuously had Bipolar Disorder, Depression, Phobias, Hallucination and Suicidal tendency. She had been taking several medicines continuously for these.” The fact stands corroborated by the summary of treatment report dated 04.11.14 by Dr. Shalini, Consultant Psychiatrist, PW-9 which is reproduced below:-

“Dr. Amali Victoria/32/F MBBS, MD(psy), Asst Prof IMH W/o Mr. Mariano Bruno / 36/ M Mch (Neuro) Surgeon Mx 7 years A/NC/N/ 1 Son 7/M Couple present together Wife C/o sadness for past 1 month, after being posted in female ward @ IMH o Feels tired, not interested in working o Feels demoralized, incapacitated o

Poor sleep She had felt well until 6 weeks, suddenly turned more and more desperate.

No H/o hypothyroidism H/o similar depressive illness in the past (+) o H/o episode during MBBS, had attempted suicide, had taken treatment with a psychiatrist at Thirunelveli, admitted in ICU, TMC.

2nd episode post partum o 3rd episode present C/o suicidal ideas past two days – hence husband has brought her for consultation today Client's husband wants to go in for 2 nd child, where as amali fears that she may not be able to cope up. Feels helpless, hopeless and worthless She wants to quit her job, but fears parents in law will leave her and go back to native place. She feels she will not be able to take care of her son or other future kids on her own.

Husband says he had requested for a second opinion because he feels she is getting very quiet and inactive at home. She had previously consulted her psychiatrist colleague at IMH also. But husband wants a second opinion as she has been talking of committing suicide for the past 2 days.

Amali Counselling Advised free T3, TSH Rx Cap. Prodep (20) 1-0-0 Tab Eliwel (25) 0-0-1 x 10 days To come with TFT report for review after 10 days To continue the therapy for sense of worthlessness"

30. Within few weeks of marriage, the Appellant No. 1 wrote an email to the deceased's mother and sister seeking their help in order to take care of the deceased but the deceased's mother refused to help and she left for United States. Subsequently, with the help of Appellant No. 1, the health condition of the deceased improved and she finished her post-graduation in 2013 with a gold medal and subsequently, started working in the year 2014. The relationship between the families were cordial and the deceased was very affectionate towards the Appellant's family and there are no evidence of cruelty or harassment meted out to her by the Appellants."

4. Learned A.G.A. vehemently opposed the bail prayer.

5. In view of the law laid down in the case of ***Mariano Anto Bruno & Another Versus The Inspector of Police (Supra)***, prima facie, the ingredients of abetment as defined under Section 107 IPC are missing, the applicant has no criminal history and there is nothing on record to demonstrate that the applicant if enlarged on bail, would in any way adversely affect the trial and without expressing any opinion on merit, I am of the view that the applicant is entitled to be released on bail. Accordingly, the bail application is ***allowed***.

6. Let the applicant ***Kajal*** be released on bail in FIR/ Case Crime No. 418 of 2023 on her furnishing personal bonds and two reliable sureties of Rs.25,000/- each to the satisfaction of the court concerned with the following conditions:

- (a) The applicant shall execute a bond to undertake to attend the hearings;
- (b) The applicant shall not commit any offence similar to the offence of which she is accused or suspected of the commission; and
- (c) The applicant 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 her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Order Date :- 3.1.2024

Arun