

HIGH COURT OF CHHATTISGARH, BILASPUR

M.Cr.C.(A) No. 432 of 2018

Order reserved on : 30/04/2018

Order delivered on : 7/05/2018

Kamal Mundra Aged About 34 Years S/o Shri Anil Kumar Mundra
R/o- Ramadheen Marg, Rajnandgaon, District- Rajnandgaon,
Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through- Police Station Kotwali,
Rajnandgaon, District- Rajnandgaon, Chhattisgarh.

---- Respondent

For applicant – Shri Surendra Singh, Sr. Advocate with Shri Maneesh
Sharma, Advocates.

For Respondent/State – Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri

CAV Order

7/05/2018

1. This application under Section 438 of Cr.P.C. has been filed by the applicant apprehending his arrest in connection with Crime No.92/2018 registered at Police Station Kotwali, Rajnandgaon (C.G.) for offence punishable under Section 306 R/w 34 of IPC.

2. As per the prosecution case, one Mahaveer Chourdiya committed suicide by jumping before the train on 10/02/2018. As per the case of the prosecution it is alleged that Mahaveer Chourdiya was finance broker. During the financial transaction and day to day affair it led to some financial liability, as such initially Vinod Lohia and Ashok Lohia started pressurizing the deceased to return the amount. Subsequently, the applicant Kamal Mundra also started the same. Threat was continuously extended that image of the deceased would be tarnished in the society as also family members would be subjected

to some attack and family members would be maligned. Frequency of such demand aggravated, eventually the deceased committed suicide. Before committing suicide hand written note made by him as also audio WhatsApp clip was made wherein entire accusation was confined to 2-3 persons and reasons were attributed that because of them he is committing suicide.

3. Shri Surendra Singh, Senior Advocate assisted by Shri Maneesh Sharma would submit that deceased Mahaveer Chourdiya was working as broker and there was no occasion to recover the money from the broker. Explaining the work of a broker it is stated that he only acts as a broker in between financier and loanee and gets his commission out of the loan transaction. It is stated that when there is no liability arises to make payment, in such case there was no occasion to ask for the recovery of the amount from deceased, the broker. He submits that in respect of Vinod Lohia and Ashok Lohia allegation is that 4.65 lakhs were outstanding and out of that 1.18 lakhs were recovered and returned and in respect of Anil and in respect of other out of one crore, 90 lakhs were recovered and only 10 lakhs were outstanding. It is stated that when there was no liability to the extent according to the suicide note to the tune of 72 to 75 crores there was no occasion to return the same. He further submits that mere demand of money will neither constitute any abetment nor cruelty. It is submitted that it would be last thing the applicant would want that a broker to commit suicide in such case entire money would not be recoverable. Learned counsel for the applicant places his reliance in case of **Gangula Mohan Reddy Vs. State of Andhra Pradesh** reported in **(2010) 1 SCC 750**, **State of Kerala & Ors. Vs. S. Unnikrishnan Nair and Ors.** reported in **AIR**

2015 SC 3351, Vedprakash Tarachand Bhaiji Vs. State of Madhya Pradesh reported in **1995 MPLJ 458** and would submit that even if in the suicidal note name have been made it must specifically point out that they have committed willful act or omission or intentionally aided or instigated the deceased to commit suicide and in order to inculcate the applicant there has to be clear *mens rea* for committing offence. It is further contended that abetment has to be beyond any doubt and active act or direct act which led the deceased to commit suicide or pushed the deceased into position that he committed suicide must be divulged. He further submits that mere demand of amount of loan do not constitute any offence of abetment, therefore the applicant may be granted benefit of anticipatory bail.

4. Learned State counsel opposes the prayer for grant of anticipatory bail and would submit that order of the court below dismissing the anticipatory bail is well merited as the audio WhatsApp message categorically point out offence committed by the applicant.

5. Perused the case diary documents. Case diary contains suicide note which was recovered when body was found on the track from the pocket. Apart from the suicide note one more audio clip in the WhatsApp message was found wherein transcription in the case diary would show that the applicant and others have stated that apart from the trouble by the owner of Dhanlaxmi Paper Mill i.e. Vinod Lohia and Ashok Lohia who have withheld his money and not giving it and he has advanced 70-72 crores to the people on their behalf by collecting money. He further stated that these persons have tortured him too much for last three years and have extended threat that everybody in

the family would be maligned and because of such fear he continued making payment. He further named Kamal Mundra of Kamal Solvent and stated that he has made his life miserable and has subjected him to too much torture and therefore he is not able to sustain the same. He further affirmed the fact that one letter he has written and also sending the same in the WhatsApp also. As has been held by the Supreme Court in case of **Praveen Pradhan Vs. State of Uttaranchal & Anr.** reported in **(2012) 9 SCC 734** that at times instigation has to be gathered from the situation of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced a person to commit suicide. There may be direct evidence or otherwise inference has to be drawn from the circumstances that whether circumstances had been such which in fact had created situation that a person felt totally frustrated and committed suicide. Likewise in case of **Pawan Kumar Vs. State of Himachal Pradesh** reported in **(2017) 7 SCC 780** wherein Supreme Court has held that abetment involves mental process of instigating a person and has to be gathered from the circumstances of a particular case.

6. In the instant case, prima facie it appears from the WhatsApp audio message which unequivocally point out that harassment caused to the deceased becomes so intolerant and unbearable that the deceased has taken extreme step. In these facts while deciding case of the applicant, this court cannot shelve the audio clip which categorically point out name of the applicant herein. In the circumstances, I am of the considered opinion that this is not a case where benefit of section 438 of Cr.P.C. can be extended in favour of the applicant.

7. Accordingly, the anticipatory bail application is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE