

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No. 41195 of 2018
Decided on: 19.09.2018

Ashwani Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashok Singla, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

This petition is for seeking anticipatory bail in case FIR No.244 dated 09.09.2018 under Section 306 of IPC, registered at Police Station, City Sangrur, Distt. Sangrur.

The allegations as contained in the FIR are that the deceased was working in the welding factory of the petitioner. On 05.09.2018 the deceased was on duty in night shift in the factory, doing welding work for fabricating some items of the Railways. The deceased is alleged to have welded six pieces of the articles a bit in a wrong manner. As it turns out ultimately, those pieces were rectified also; and have been sold by the petitioner, as well. However, due to this wrong welding work the petitioner scolded the deceased in front of his son and then in front of labourers for two days. As per the allegations, the petitioner ultimately shunted-out the deceased from the job. The deceased went into deep dejection. Thereafter, the deceased had committed suicide. With these broad allegations, the FIR was got lodged by the son of the deceased;

being witness to the harassment and scolding behaviour of the petitioner qua the deceased. Subsequently, the police found the suicide note as well. The suicide note gives the detail of the callous behavior of the petitioner, which repeatedly goaded the deceased and threw him into the state of extreme dejection.

Counsel for the petitioner submits that even if the allegations, as contained in the FIR and the suicide note are taken to be correct; then also the ingredients of Section 107 and 306 of IPC are not made out. Therefore, he has been wrongly made the accused in the FIR. He could not be arrested in the case. It is further contended by the counsel that the alleged incident is dated 6.09.2018 whereas the suicide of the deceased has happened on 8.09.2018. Hence, it is contended that there is no proximity between the alleged humiliation by the petitioner and the suicide by the deceased.

Having heard learned counsel for the petitioner, this Court finds itself unable to agree with the arguments of the learned counsel for the petitioner that the petitioner could not be arrested because the requirements of Section 306 of IPC are not made out.

The offence under Section 306 of IPC is alleged against the accused for abetting the deceased in commission of the suicide. The abetment is defined by Section 107 of IPC. A bare perusal of the Section 107 of IPC shows, the section uses the words 'instigates', 'conspiracy' and 'intentionally', which define the abetment of the act of suicide. All these terms show that the abetment is not only the tangible conduct which can be reflected in the external circumstances. It also involves 'mens rea' of the accused. The 'mens rea' of an accused can be decyphered from the totality of the circumstances available in the facts of the

case. From the circumstances, as disclosed in the suicide note; and as described in the FIR by the eye witness, qua the humiliation caused by the petitioner to the deceased, neither the 'mens rea' is excluded nor the possibility of positive coercion upon the deceased is ruled-out. There are specific allegations as contained in the suicide note that the petitioner humiliated the deceased in front of his son and colleagues. Although the deceased had, obviously, executed some work in wrong manner by doing welding wrongly, however, he had even offered the petitioner to deduct his salary. But that did not satisfy the petitioner. The petitioner had gone to the extreme step of terminating the services of the deceased for such a small thing, despite the fact that the deceased had been working with the petitioner, to his satisfaction for the past about 20 years. So, prima facie, the conduct of the petitioner is such which could have been intended to drive the deceased to take the extreme step; as has been taken by the deceased. Therefore, the arguments of the counsel for the petitioner that the offence under Section 306 of IPC is not made out, even prima facie, cannot be accepted by this Court at this stage. Needless to say the provision of Section 438 Cr.P.C. is only to see if it would be justified to prevent the police to investigate the case by taking the accused in custody. For the purpose of this provision court is not to see the possibility of ultimate conviction or acquittal of the accused. Possibility of conviction or acquittal of accused can be seen, even prima facie after collection of evidence during investigation.

The next argument of the counsel for the petitioner that there is no proximity between the humiliation caused by the petitioner to the deceased and the act of commission of suicide by the deceased, is also liable to be noticed only to be rejected. It is more than obvious from the happenings, as described

in the FIR and the suicide note, that the intentional humiliation thrown by the petitioner upon the deceased was of such nature and extent that the deceased could not bear it despite passing of 2 days. It has come on record that the son of the deceased had even called his maternal uncle, to console the deceased. However, the intentional humiliation caused by the petitioner and the loss of job forced by the petitioner; had gone so deep down in the mind of the deceased that it kept on haunting him, till he ended his life. Therefore, the connect between the abetment and the suicide had never sub-sided. Otherwise also, proximity of the instigation to the act pursuant to that instigation; cannot be measured only in terms of lapse of time. It depends upon other factor like the intensity of the instigation or the coercion; as well. In the present case also, the petitioner, obviously cannot get the benefit of the fact that there was lapse of two days time between the alleged abetment caused by the petitioner and commission of suicide by the deceased. The attending circumstance reflecting upon the 'mens rea' of the petitioner and the positive participation by the petitioner; towards driving the deceased to commit the act of suicide, can be decyphered by the police only during the process of investigation. If the petitioner is protected from arrest at this stage, this is obviously going to hamper the proper investigation, which is so imperative in this present case.

The Hon'ble Supreme Court has held in numerous cases that the investigation conducted by the police when the accused joins the investigation with the protection of the Court order is qualitatively and quantitatively different than the interrogation of the accused conducted by the police when the accused does not have sense of protection of the court order.

Of course, the accused as a individual, has a right to life and

liberty. However, right to life and liberty is subject to the due procedure prescribed by law. As per the normal procedure, the police has the power to arrest the accused even without warrants and the accused has to face the interrogation; as deemed fit by the police. However, the Court has been given extra-ordinary powers under Section 438 of Cr.P.C.to protect an accused from such arrest. This power is to be exercised by the Court only when it is convinced, at least prima facie, of the extenuating factors, which overwhelmingly lead towards the innocence of the accused. In the present case this Court does not find any extenuating circumstances, which could be deemed to be sufficient by this Court, to protect the petitioner against his arrest, and thereby hamper the investigation by the police in its right earnest.

In view of the above, finding no merits in the present case, the petition is hereby dismissed.

(RAJBIR SEHRAWAT)
JUDGE

19.09.2018

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Speaking/Non-speaking : Yes/No
Reportable/Reasoned : Yes/No