

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

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CRM-M No.18566 of 2020

DATE OF DECISION : 14th JULY, 2020

Sapna & another

.... Petitioners

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present: Mr. J. S. Ghumman, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioners under Section 438 Cr.P.C for grant of anticipatory/pre-arrest bail in case FIR No.216 dated 11.12.2019 registered under Section 306 IPC, at Police Station Adampur, District Jalandhar Rural.

The allegations, in brief, are that the son of the complainant was married with petitioner No.1 on 27.02.2019. However, right from day one, petitioner No.1, in collusion with her father, used to harass the son of the complainant. Reason for this was that the complainant happened to be abroad and in India only the wife of the complainant and his son used to reside. As per the allegations petitioner No.1 used to repeatedly harass her husband-deceased and his mother, insisting that she should be sent abroad. The deceased son and the wife of the complainant used to inform the complainant on phone in this regard. Additionally she

also developed illicit relations with another person and intended to marry him. In these entire events, even the sisters of the complainant used to instigate her. As per the allegations, petitioner No.2, who is serving in police, also used to threaten the deceased all the time. Feeling harassed to the maximum, the deceased consumed poison and ended his life. Just two days before this incident, the complainant received a call from the Police Station Model Town, Hoshiarpur that Sapna-petitioner No.1 had moved a complaint against the deceased and the complainant and that the complainant had to appear before the police on 09.12.2019. In this situation, the deceased committed suicide on next day i.e. on 10.12.2019. Hence the present FIR has been registered.

The counsel for the petitioners has submitted that the case against the petitioners is totally concocted. They have never instigated or harassed or humiliated the deceased or the complainant. Still further it is submitted that; rather; it was deceased and the complainant who were harassing petitioner No.1. Therefore, petitioner No.2 had lodged a complaint with the police against the deceased and the complainant. It is further submitted by the counsel for the petitioners that, in fact, history of the family of the complainant shows that the complainant had earlier got married. However, he had divorced his wife. Thereafter he married again. At present it is his second wife only who is alive. Even the deceased son of the complainant was earlier married. However, that marriage ended just after eight months. The marriage of petitioner No.1 with the deceased was also the second marriage. Hence, the sequence of the events would show as to under what kind of pressure the deceased might have been and he might have gone in depression on account of

these situations. Therefore, it is only because of the mental weakness created by this depression, which might have led the deceased to end his life. It is further submitted that in fact on 07.12.2019, petitioner No.1 was shunted out of the house and had gone to her maternal uncle. Petitioner No.2 had lodged a complaint with the police on 08.12.2019 against the complainant and his son-deceased and on 10.12.2019 the son of the complainant committed suicide. Hence, petitioner No.1 could not be held responsible because she was already away from the house and she had already raised her grievance qua harassment by the complainant and the deceased. To buttress his claim the counsel for the petitioners has also relied upon the judgments rendered by Hon'ble the Supreme Court in the cases *Sanju @ Sanjay Singh Sengar versus State of Madhya Pradesh, 2002(2) RCR (Criminal) 687* and *K. V. Prakash Babu versus State of Karnataka, 2017(1) RCR (Criminal) 60*; one judgment rendered by High Court of Allahabad in case *Asha Shukla versus State of UP & another, 2002 CrL L.J. 2233* and one judgment rendered by High Court of Gujarat in case *State of Gujarat versus Pradyuman Ramanlal Mehta and others, 1999 CrL L.J. 736*.

It is further submitted that for allegation of abetment to suicide to sustain, there has to be a positive act on the part of the accused. However, in the present case there is no allegation of any specific positive participation of the petitioner in the process of commission of suicide by the deceased.

Notice of motion.

Mr. Sidakmeet Sandhu, AAG, Punjab, accepts notice on behalf of the State.

Learned State counsel, being instructed by ASI Harpreet Singh, has submitted that there are specific allegations against the petitioners. Moreover, the deceased has left a detailed suicide note, giving complete narrative of his grievances and the sequence of facts which led to the ultimate step being taken by him. It is further submitted that as per the allegations, petitioner No.2 is serving in the police department. Therefore, he had been harassing the deceased and his family members. Since the matter pertains to the relation between husband and wife, therefore, the investigation of the case would require extraction of intricate details of the circumstances which constituted the factual gamut forcing the deceased to commit suicide. Hence, the custodial interrogation of the petitioners would be required.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance /interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to

get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the fact of the present case, there are specific allegations against the petitioners. As per the allegations right from the day one, petitioner No.1 had been harassing the deceased for sending her abroad. Over and above that, petitioner No.1 is alleged to have maintained illicit relation with the person named in the FIR. This fact had come to the knowledge of the deceased-husband of petitioner No.1. Not only this, petitioner No.2, allegedly misusing his position of being a police man, also manipulated a complaint against the family of the deceased just two days before the suicide by the deceased. In this complaint the police had already summoned entire family of the deceased. Given these circumstances, it cannot be ruled out that the deceased was put under such a tremendous pressure that he could not avoid taking of the final step. Hence, the acts alleged against the petitioners are of such proximity in time, vis-à-vis the suicide by the deceased, that this may qualify as an abetment as well. Although the prosecution would be deciphering the entire sequence of the facts during investigation, however, at this stage, the fact remains that there are specific allegations, which according to suicide note, have led to the unfortunate event of suicide by the deceased. Hence, this court does not find any ex-facie innocence on the part of the petitioners, vis-à-vis the allegations leveled against them.

Moreover, the husband of petitioner No.1 has committed suicide; therefore, the events which have led to the incident are of

intricate details which are surrounded by secrecy of intimate relation between the husband and wife. It is only the interrogation of the petitioners, particularly, petitioner No.1, which can disclose the entire sequence of correct facts. For that purpose, the police would definitely require custodial interrogation of both the petitioners. Therefore, at this stage, if the petitioners are granted protection against their arrest, that would definitely hamper the free and fair investigation on the part of the police.

Although the learned counsel for the petitioners has relied upon the judgment rendered in the cases *Sanju @ Sanjay Singh Sengar (supra)*; *K. V. Prakash Babu (supra)*; *Asha Shukla (supra)* and *State of Gujarat (supra)*, however, this court finds the judgments to be distinguishable on the particular facts of this case. Moreover, the law laid down in the judgments, though need not be disputed, would be applicable during the course of the trial. The present case is at the initial stage of investigation. The prime consideration at this stage is extraction of the correct facts pertaining to the alleged offence. Hence, the judgments relied upon by counsel for the petitioners are of no assistance to the petitioners.

Although the counsel for the petitioner has referred to family history of the deceased to brand him as a person under depression, however, the alleged history, rather, shows that the deceased had already with stood all those upheavals and had surpassed them. Only thereafter he would have been ready to marry the petitioner No.1. So this court does not find any force in this argument as well.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed. However, nothing observed herein above shall affect merits of the case during the trial, if any.

14th JULY, 2020
‘raj’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>