

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

**CRM-M-30698-2020
Date of decision: 12.10.2020**

Santosh Kumari

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Nipun Vashist, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondent-State.

None for the complainant.

ARUN KUMAR TYAGI, J

(The case has been taken up for hearing through video conferencing.)

1. The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of anticipatory bail in case FIR No.131 dated 20.09.2020 registered under Section 306 read with Section 34 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Sector 20, Panchkula.

2. The above said FIR was registered on statement of Lalit Kumar. In his statement complainant Lalit Kumar alleged that he is running his private business. They are two brothers and his elder brother Amit Hooda is living separate while his father Rajendra Kumar (deceased) was living with him. His father retired from Bell Factory, Industrial Area, Phase-II, Panchkula and had constructed three Storey

House bearing No.98, Sector 19, Panchkula. Ground floor of the house was given on rent to accused Mandeep while first floor was given on rent to Tarun. One room constructed on the top floor was kept by them for their own use wherein their articles were kept. Rent agreement in favour of accused Mandeep ended in 2019. His father asked accused Mandeep, his wife Vintee and his mother Santosh Kumari (the petitioner) to vacate the same, as he being old aged and sick person wanted to live there but accused Mandeep did not vacate the same and when his (complainant's) wife and mother visited the house, accused Mandeep and his wife abused and humiliated them. Accused Mandeep, his wife and his friend Rohit used to harass his father. On 28.07.2020, when his mother and wife went to the house, accused Mandeep manhandled them due to which his father was disturbed and remained under depression. On 20.09.2020, in the morning his father went to the house where accused Mandeep and his wife abused him. On his return his father intimated about the incident to him and in the afternoon committed suicide by hanging. Pursuant to registration of the FIR, the police investigated the case and arrested accused Mandeep and Rohit who are in judicial custody.

3. Apprehending her arrest, the petitioner has filed the present petition for grant of anticipatory bail.

4. The petition has been opposed by the learned State counsel in terms of short reply filed by way of affidavit of Satish Kumar, HPS, Assistant Commissioner of Police, Panchkula on behalf of respondent-State and by the learned counsel for the complainant in terms of reply filed by the complainant.

5. I have heard arguments addressed by Mr. Sanjay Kaushal, learned Senior Advocate assisted by Mr. Nipun Vashist, Advocate for the petitioner, Mr. Naveen Singh Panwar, DAG, Haryana learned State counsel and Mr. Surinder Singh, learned counsel for the complainant and I have gone through the relevant record.

6. Mr. Sanjay Kaushal, learned Senior Advocate assisted by Mr. Nipun Vashisht, Advocate for the petitioner has argued that the petitioner, a government employee aged 54 years, has been falsely implicated in the present case. The petitioner is a widow and is residing separately from her son accused Mandeep with her mentally retarded another son in house purchased by her vide sale deed dated 06.11.2012. There was dispute regarding tenancy between her tenant son accused Mandeep and his landlord Rajendera Kumar (deceased). Deceased Rajendra Kumar served legal notice on her son accused Mandeep which had been replied to by him. In the FIR general and vague allegations have been levelled against the petitioner and alleged instances of abuse and harassment of the deceased by her have not been mentioned with requisite particulars. The petitioner did not coerce, goad or instigate the deceased for committing suicide. The deceased could file ejectment petition for vacation of his house by the tenant. In case of inaction by the police, the deceased could file complaint before the concerned Judicial Magistrate having territorial jurisdiction. The deceased was hyper-sensitive to ordinary petulance, discord and differences happening in day to day life and committed suicide. The petitioner did not abet commission of suicide by the deceased in any manner. The attributions made to her in suicide note of the deceased do

not fall within the definition of abetment under Section 107 of the IPC and the petitioner cannot be said to have committed offence punishable under Section 306 of the IPC. In support of his arguments, learned Senior Advocate for the petitioner has placed reliance on the judgment of Hon'ble Supreme Court in ***Gangula Mohan Reddy Vs. State of Andhra Pradesh : (2010) 1 Supreme Court Cases 750.***

7. Learned Senior Advocate has further submitted that the petitioner is ready to join the investigation and no recovery is to be made from her. Due to the petitioner being government servant there is no likelihood of the petitioner absconding. The petitioner will not intimidate or temper with evidence in any manner. Therefore, the petitioner may be granted anticipatory bail.

8. On the other hand, learned State counsel and learned counsel for the complainant have argued that the petitioner, her son accused Mandeep, his wife Vintee and his friend Rohit harassed the deceased. The deceased did not commit suicide due to the tenancy dispute. Rather he was disturbed due to maltreatment of his wife and daughter-in-law by accused Mandeep on 28.07.2020 regarding which no action was taken by the police despite written complaint. In his suicide note the deceased has mentioned that accused Mandeep neither paid the rent, water and electricity charges nor vacated the house. When his wife and daughter-in-law visited the house to take out certain things accused Mandeep caught her hand and threw out both of them from there. The police did not take any action on his complaint and joined hands with the accused. He felt disturbed and obsessed and his mental condition worsened. He told his condition to the accused and mother of

Mandeep commented that she is having huge money with her and she would get his death covered up as death caused by Corona. A goon who used to visit the accused said that he would not let anything happen to them and mother of Mandeep said that she would give money to him whatever amount would be spent on the same. In his suicide note the deceased had also mentioned that his mental condition became unbearable and due to harassment by Mandeep, his wife, mother (the petitioner) and friend he was forced to commit suicide.

9. Learned State counsel and learned counsel for the complainant have further argued that there is sufficient evidence against the petitioner regarding her involvement in the crime and her custodial interrogation is required in the case. The petitioner is not entitled to anticipatory bail. Therefore, the petition may be dismissed.

10. In ***Gangula Mohan Reddy's case (supra)*** (relied upon by learned senior counsel for the petitioner) Hon'ble Supreme Court observed as under:-

*"15. Learned counsel also placed reliance on another judgment of this court in **Ramesh Kumar v. State of Chhattisgarh, 2001(4) RCR(Criminal) 537 : (2001)9 SCC 618**. A three-Judge bench of this court had an occasion to deal with a case of a similar nature. In a dispute between the husband and wife, the appellant husband uttered "you are free to do whatever you wish and go wherever you like". Thereafter, the wife of the appellant Ramesh Kumar committed suicide. The Court in paragraph 20 has examined different shades of the meaning of "instigation". Para 20 reads as under :*

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not

necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

*16. In **State of West Bengal v. Orilal Jaiswal & Another, 1994(3) RCR(Criminal) 186 : (1994)1 SCC 73**, this Court has cautioned that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.*

17. The Court in the instant case came to the conclusion that there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted commission of suicide by Seema may necessarily be drawn.

18. *In the instant case, the deceased was undoubtedly hyper sensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation.*

19. *This court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi), 2009 (4) RCR(Criminal) 196 : 2009(5) RAJ 278 : 2009(11) SCALE 24** had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.*

20. *Abetment involves a mental process of instigating a person or intentionally aiding 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."*

11. In the present case Rajendra Kumar father of complainant Lalit Kumar committed suicide and left behind suicide note in which the deceased held the petitioner, her son Mandeep and his wife Vintee and friend Rohit to be responsible for his death. Accused Mandeep and his friend Rohit have already been arrested by the police. The petitioner is a widow aged about 54 years, who was/is living separate with her mentally retarded son in house purchased by her vide sale deed dated 06.11.2012. The fact that the petitioner was living separate has also

been verified during investigation. The case of petitioner stands on a different footing from that of her son Mandeep and his friend Rohit to whom the specific allegations of harassment are made. The petitioner is alleged to have commented to the deceased that she had huge money and would get his death covered up as death caused by Corona and assured to give whatever money was spent to see that no action was taken. Debatable questions as to whether the attributions to the petitioner fall within the definition of “abetment” under Section 107 of the IPC and whether the petitioner can be said to have abetted commission of suicide by the deceased are involved. The petitioner is a widow aged 54 years. As reflected by first proviso to Section 437 of the Cr.P.C., the law favours grant of bail to woman unless there are strong reasons to decline the same. The petitioner is a Government employee and is not likely to abscond. In the very nature of things the case against the petitioner is based on suicide note and statements of the witnesses and recovery of any material object or document is not to be made from the petitioner. In the facts and circumstances of the case, the investigation can be carried out by joining the petitioner in the same and custodial interrogation of the petitioner cannot be said to be necessary/essential.

12. Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner and the fact that no recovery is to be made from the petitioner, but without commenting on merits, I am of the considered view that the petitioner deserves grant of anticipatory bail.

13. In view of the above, the petition is allowed and the

petitioner is directed to join the investigation by appearing before the SHO/Investigating Officer of the case as and when called upon by written notice to do so. In the event of her arrest, the petitioner shall be released on bail by the arresting officer/investigating officer on furnishing of bail bonds by her to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the conditions enumerated under Section 438(2) of the Cr.P.C. failing which she shall not be entitled to the protection of anticipatory bail allowed to her.

12.10.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No