

CRM-M-3846-2021

Date of Decision: 16.03.2021.

Parveen

...Petitioner

vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. R.N. Lohan, Advocate for the petitioner.

Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.0001 dated 01.01.2021, registered under Sections 306, 354-A, 34 IPC, at Police Station Uchana, District Jind.
3. Learned counsel contends that the deceased was mentally disturbed as evident from the medical certificate produced by her when she did not attend duty in October, 2020 as also from the contents of the suicide note. Learned counsel further contends that there is no specific role attributed to the petitioner, there is no date on the suicide note, no cash was found in the almirah of the deceased as per her writing in the suicide note and lastly that the mobile of the deceased which contained the audio/video prepared by the deceased shortly before committing suicide was not taken into possession by the police from the spot.
4. Learned counsel for the petitioner has referred to the decision in

Bhagwan Dass versus Kartar Singh and others, 2007(3) RCR (Criminal) 87

to contend that the deceased was hyper sensitive, therefore had committed suicide, to the decision in Madan Mohan Singh Vs. State of Gujrata and others 2010 (4) RCR (Criminal) 207, to contend that suicide note written by the deceased at best could be taken as anguished feelings of the deceased qua the persons named therein and did not depict anything intentional on the part of the accused so as to force the deceased to commit suicide, to the decision in S.S. Chheena Versus Vijay Kumar Mahajan and another 2010(4) RCR (Criminal) 66, to contend that there has to be a clear *mens rea* to commit the offence and it requires an active or direct act which led the deceased to commit suicide, and that the act complained of must have been intended to push the deceased into such a position that she had no other option except to commit suicide. Learned counsel has also referred to the decision in Netai Dutta Vs. State of West Bengal, 2005(1) Crimes 352 to contend that the allegations against the petitioner were vague and that in the circumstances, the petitioner was entitled to grant of pre-arrest bail.

5. Per contra, learned DAG, Haryana has vehemently opposed the prayer for pre-arrest bail on the ground that the name of the petitioner is mentioned in the suicide note as one of the officials working in the office of SDM Uchana who created conditions to harass the deceased to such an extent that she no option but to commit suicide. Learned DAG, Haryana, has relied upon the decision in Chitresh Versus State of Delhi 2009(16) SCC 605 to contend that in order to instigate the deceased to have committed suicide, it was not necessary for the accused to have actually used words to that effect but the continued course of conduct of the accused created such circumstances that the deceased was left with no other option except to commit suicide and under such circumstances, instigation stood established.

Relevant extract of the decision in Chitresh Kumar Chopra's case (supra) is reproduced as under:-

14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the Indian Penal Code. The meaning of the said word was considered by this Court in Ramesh Kumar v. State of Chhattisgarh, 2001(4) RCR (Criminal) 537 : (2001)9 SCC 618. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then was) said that 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. 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 to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction"

(See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or willful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

6. Learned DAG, Haryana contends that when at home, the deceased used to receive messages on her mobile phone of her User ID

having been unlocked in her absence and of some unknown persons

operating her computer without depositing the money for carrying out official work in the Government Account. Learned DAG, Haryana contends that in the circumstances custodial interrogation of the accused/petitioner is necessary to ascertain the *modus operandi* adopted by him to get the illegal works done through the deceased as also to ascertain the role of each of the accused including the petitioner in his interaction with other accused in harassing the deceased, getting illegal works done from the deceased, using the computer of the deceased without her knowledge as also in framing innocent persons in false cases for extraneous reasons. Learned DAG contends that in such circumstances custodial interrogation is necessary. Reference in this context is made by learned DAG to the decision of Hon'ble the Supreme Court in 'CBI versus Anil Sharma' 1994 (4) RCR (CrI.) 268.

7. I have considered the submissions of learned counsel for the parties.

8. As per the FIR lodged by the deceased's husband, the deceased was working as Computer Operator MTS (Multi Tasking Staff) in the office of the SDM, Uchana for the last about six years and about one and half months ago, she revealed to the complainant that other staff members at the office were getting illegal works done from her and on her refusing and showing resistance, they had threatened her, that the same was being done with the help and support of the SDM concerned. The FIR further mentions that the complainant had gone to Hisar on 28.12.2020 in search of work and on 31.12.2020 the deceased rang up the complainant on his phone while under stress and disclosed that Bharat Bhushan (JP), Sukhdev (MTS), Arjun (MTS) Atul DEO, Parveen Clerk and Mannu Sheokand and outsider Dalbir Singh Gill, Pappu, Balkar, Deepa Typist, Tarsem Typist in collusion with each other were harassing her on the asking of SDM Rajesh Koth, besides

they had interfered/tampered with her computer and were also doing obscene acts against her. Apart from the aforementioned officials, the deceased had also named one Sandeep Clerk, as harassing her but who had in the meantime been transferred to Narwana. The complainant further mentioned that the deceased was so fed up with the harassment meted out by the above mentioned persons that she was thinking of ending her life and that around 12:00/12:30 AM, Nikki—his daughter informed him that her mother had taken some poisonous substance and was becoming unconscious. Thereupon, the complainant immediately made a call to his cousin and asked him to reach his house and to take her care and also started for his home from Hisar. However, on the way, he was informed by his cousin Pardeep on telephone that his wife Bhateri Devi had died. On the complainant reaching home, he saw the mobile of his wife lying by her side and on checking the same, he found some recording, which was made by her after taking poisonous substance narrating the position as stated above. Complainant prayed for legal action against the aforementioned persons who had harassed his wife due to which she took poisonous substance and died.

9. A four page suicide note recovered from under the pillow of the deceased apart from a red coloured cloth stained with vomit were taken into possession and on the basis of the same and as per the position narrated above, the aforementioned FIR was registered. Thereafter, Nikki- daughter of deceased produced, CD, pen drive of last recording of deceased, which deceased had made on 01.01.2021 and also produced the diary written by deceased Bhateri Devi, in which day-to-day expenses and other transactions were written by the deceased in her own handwriting. Print out of the conversation which was recorded in the CD was also prepared. Search was

but no cash etc. was found therefrom. On 16.01.2021, accused Arjun Kumar and Tarsem @ Bedi were arrested and they suffered disclosure statements that they were working in Saral Kendra Uchana along with Bhateri Devi. Dalbir @ Pappu was doing illegal work in the office of SDM and Tehsildar with the help of Balkar resident of Dhaso Khurd and used to extract huge money from the persons desirous of getting licences and RCs of their vehicles prepared, all officials at Saral Kendra Uchana and Tehsil office were terrorized and were working under their dictates/commands, that officials who did not toe their line were implicated in false corruption cases, they further disclosed that in order to save themselves they used to get the illegal work done from deceased Bhateri Devi and when she used to refuse or submit to their commands, then they all used to pressurise her. The above mentioned persons further disclosed that besides them, Bharat Bhushan, Sukhdev, Arjun, Atul, Parveen, Mannu Shoekand and Sandeep Clerk used to deride Bhateri Devi by doing obscene acts towards her and when Bhateri Devi used to complain about their behaviour to SDM Rajesh Koth, then he and other officials used to pressurise her by saying that she would be implicated in a false case and that due to the aforesaid pressure, Bhateri Devi committed suicide.

10. As per the FIR the conditions created by the accused were such that the deceased was left with no other option and was thereby instigated to commit suicide. As regards the plea that the deceased was hyper sensitive, therefore had committed suicide, it needs mention that admittedly, there is only a single medical prescription slip of around October 2020 mentioning the deceased having anxiety/palpitation and of said medical prescription being valid only for seven days and not being valid for medico legal purpose. Admittedly, the deceased was working for the last six years in Saral

Kendra besides had two children, whom she was looking after. Whether the anxiety/palpitation, was on account of notice issued to her by the SDM for her absence or on account of pressure mounted by the officials named above, who had created a cartel and as alleged by the deceased were getting wrong works done from her, cannot be commented upon at this stage and the veracity of the same would come out only in the investigation, nor can it be said at this stage whether the deceased committed suicide on account of anxiety, especially in the background of it being the categorical claim of the deceased not only in the suicide note but also in the audio/video of her being harassed by the staff members named above for getting wrong works done from her and of her being subjected to harassment and deridement on her opposing the aforementioned persons. The plea that the suicide note was at best an expression of anguished feelings of the deceased qua the persons named therein and did not depict anything intentional on the part of the accused so as to force the deceased to commit suicide as also that there was absence of *mens rea* to force the deceased to commit suicide would be adjudicated upon in the trial and it would be premature to comment upon the same in view of the clear and categorical allegations against the accused including the petitioner of harassment which forced the deceased to commit suicide.

11. In the light of the position noted above especially specific stand of the deceased in the suicide note of her being harassed by the staff including the petitioner to do illegal work in office and of being terrorized on her refusing to do so, of the deceased having informed on phone, the complainant i.e. her husband, while under great stress, shortly before committing suicide that the officials named above including the petitioner

tampered with the functioning of her computer besides subjected her to obscene acts as a result of which she was so fed up that she had decided to end her life whereafter at about 12:00/12:30 AM on same day, the complainants daughter Nikki informed the complainant that Batheri Devi had consumed some poisonous substance and had become unconscious as also in view of the deceased having specifically named the petitioner in the audio, the custodial interrogation of the petitioner being required to ascertain the modus-operandi resorted to, to get illegal works done from the deceased in connivance with other accused and how he used to operate her computer in her absence besides recovery to be made of all the documents allegedly prepared from the computer of the deceased in her absence as also to ascertain the consideration received while working on the computer of the deceased in her absence, I do not find any merit in the instant petition warranting grant of pre-arrest bail to the petitioner, therefore dismiss the same.

12. However nothing stated hereinabove shall be taken to be an expression of opinion on the merits of the case.

(B.S. Walia)
Judge

16.03.2021.

'Rajesh'

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