

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

CRM-M-41751 of 2021

Date of decision: 01.11.2021

Anita and another

Petitioners

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. R.P. Dhir, Advocate and
Ms. Simsi Dhir Malhotra, Advocate for the petitioners.
Ms. Bhavna Gupta, AAG, Haryana.
Ms. Rishma Verma, Advocate for the complainant.

AVNEESH JHINGAN, J (Oral):

This petition under Section 438 Cr.P.C. is filed seeking anticipatory bail in FIR No. 117 dated 18.9.2021, under Section 306 read with Section 34 IPC, registered at Police Station Division No. 3, District Jalandhar.

The FIR was registered on the statement of Arun Kumar brother of Mukesh Kumar (deceased). As per the contents of the FIR, the deceased was staying with his maternal uncle-Kishan Lal and looking after him. Masi (Aunt) of complainant-Anita (petitioner No. 1) and adopted daughter of uncle Navita (petitioner No. 2) were also staying there. Kishan Lal died two months back. On 18.9.2021, the complainant received a phone call from the petitioners that the deceased was breaking the glasses of the house. The complainant reached there and found that glasses were broken and the deceased was also there. On asking as to why he was doing so, the

deceased replied that his clothes were lying inside the house and the petitioners were neither allowing him to enter the house nor giving his clothes. The deceased went to the street, came back, poured oil and set himself on fire. He was taken to the hospital by the complainant, on the way on phone video was recorded. During treatment, the deceased expired in the hospital.

Learned counsel for the petitioners submits that the petitioners were granted interim anticipatory bail initially but vide impugned order, it was not confirmed rather cancelled. He further submits that the video recording can not be considered as a dying declaration. Submission is that a suit for permanent injunction was filed by the petitioners for restraining the deceased entry to the house. He places reliance upon the photographs annexed with the petition to show that the deceased was breaking the glasses of the house. Further contention is that no case is made out of abetment of suicide as the petitioners never specifically told the deceased to commit suicide. The petitioners had not uttered any words to instigate the deceased to commit suicide. He relies upon a recording in a pen drive annexed with the petition to show that petitioner No. 2 offered clothes to the complainant to wash the body of the deceased and gave three buckets of water to extinguish the fire.

Learned counsel for the State opposes the prayer for anticipatory bail. She submits that interim anticipatory bail was granted as it was not brought to notice of the court that except the statement of the complainant, there was a video recording wherein the deceased specifically named the petitioners for causing harassment, leading him to commit

suicide.

Though the complainant has not been impleaded as party, Ms. Rishma Verma, Advocate puts in appearance on behalf of the complainant and opposes the prayer for grant of pre-arrest bail.

The deceased burnt himself in front of the house occupied by the petitioners. The complainant is an eye-witness. There is a video recording while deceased was being taken to the hospital, specifically naming the petitioners to be responsible for his act. From the pleadings, it is forth coming that his dying declaration could not be recorded as he was not declared fit by the doctors. It would not be appropriate for the Court at this stage to go in detail of the evidentiary value of the evidence available including the video recording. Suffice to say, apart from the statement of the complainant who was an eye-witness more evidence is available against the petitioners.

The contention of learned counsel for the petitioners that no specific words were said by the petitioners to the deceased for committing suicide and hence there was no abetment would be subject matter of trial. It is settled law that for abetment, there should be instigation and instigation can be by the act or omission of the accused creating the circumstances for the deceased to attempt extreme step of suicide. As per the allegations, the deceased was deprived of shelter and clothing by the petitioners. It would be subject matter of investigation and trial as to whether this conduct of depriving basic survival amenities would amount to abetment or not.

Reliance upon the suit for permanent injunction filed by the petitioners for restraining entry of the deceased in the house is an indicator

of a dispute that the deceased was not allowed to enter the house.

Reliance upon the photographs annexed with the petition cannot be commented upon by this court as the authenticity, source and who clicked these photographs under what circumstances needs to be gone into.

This Court desist from seeking any comments of the State on the contents of the recording produced in pen drive. The Supreme Court in **Prashant Dagajirao Patil v. Vaibhav @ Sonu Arun Pawar and another etc., 2021(1) RCR (Criminal) 594** had set aside the directions issued by the High Court to the respondent to submit comments about the contents of CCTV footage. It was held that it was not appropriate to pass such directions in the bail matter which will have direct bearing on the trial.

Considering the facts and circumstances in totality and the nature of allegations against the petitioners, no case is made out for anticipatory bail.

The petition is dismissed.

However, nothing stated in this order shall be construed as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

1st November, 2021

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1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes