

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

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CRM-M-42765-2021
Date of Decision:02.11.2021

KunalTeji

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr.Ranjeet K.Jaswal, Advocate for the petitioner

Mr.RanaHarjasdeep Singh, DAG Punjab

Mr.Jasraj Singh, Advocate for the complainant

Amol Rattan Singh, J. (Oral)

Case heard by video conferencing.

By this petition, the petitioner seeks the concession of 'anticipatory bail' upon FIR No. 156 having been registered at Police Station Sadar, District Hoshiarpur, on 19.09.2021, alleging therein the commission of offences punishable under the provisions of Sections 306 and 34 of the IPC.

On 11.10.2021, the following order had been passed by this Court:

Case heard by way of video conferencing.

Notice of motion be issued to the respondent, returnable on 02.11.2021.

A gazetted officer is directed to file a detailed reply to the petition, failing which the SSP concerned shall be summoned to court.

Along with the affidavit to be filed, the dying declaration stated to have been made by the deceased in the hospital (as has been noticed in the order of the learned Addl. Sessions Judge, Hoshiarpur, dated 28.09.2021), shall be annexed.

Counsel for the petitioner would also address arguments on the next date of hearing in terms of the judgment of the Supreme

Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (Crl. Appeal no. 1473 of 2009, decided on 10.08.2009), wherein what constitutes "instigation" in the context of an offence punishable under Section 306, has been elucidated in detail by the Apex Court.

Learned counsel appearing for the complainant submits that as a matter of fact, other than the dying declaration, there is also a videography one day prior to the death of the deceased, giving therein the details of how he has been (allegedly) instigated to commit suicide, with him exonerating his wife and father and only implicating the petitioner and his co-accused, Paramjit Singh @ Pammi, as also his wife's mother, Kiran."

A short affidavit has been filed by the Deputy Superintendent of Police, Sub Division City, District Hoshiarpur, on behalf of the respondent-State, which is ordered to be taken on record.

As per the said affidavit (which seems to reiterate the contentions of learned counsel for the complainant as recorded in the order dated 11.10.2021), the deceased in his video recording prior to his death implicated the petitioner herein (Kunal Teji, brother of the wife of the deceased), as also other co-accused, but exonerated his wife and her father.

Though learned counsel for the petitioner obviously argues that the deceased having committed suicide and he not having directly instigated him to do so by any of the accused including the present petitioner; however, what needs to be cited by this Court is the following part of what has been held by the Supreme Court in paragraphs 14 and 15 in the case of *Chitresh Kumar Chopra (supra)*:

"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 IPC. The meaning of the said word was considered by this Court in Ramesh Kumar Vs. State of Chhattisgarh⁴. 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 (2001) 9 SCC 618 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 wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful 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 mensrea is the necessary concomitant of instigation.

In view of the above, this being a petition seeking anticipatory bail for the petitioner under Section 438 Cr.P.C., there being, allegedly, at least

some instigation on the part of the petitioner in terms of what has been held to be instigation by the Supreme Court, I find no ground to entertain this petition, which is consequently dismissed.

However, upon the petitioner being arrested, on him filing any petition under the provisions of Section 439 Cr.P.C., that would be considered on its own merits, with the investigation also to continue wholly on the basis of the evidence gathered.

The reply filed on behalf of the respondent-State is ordered to be taken on record.

02.11.2021

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**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No