

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-50604-2021

Date of decision : 07.12.2021

Bittu Singh and another

... Petitioners

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.G.S.Sandhu, Advocate
for the petitioners.

Mr.Sukhbeer Singh, AAG, Punjab.

Mr.B.S.Jatana, Advocate
for respondent no.2.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioners in FIR no.130 dated 22.08.2017 registered under Sections 306, 34 IPC at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib.

Learned counsel for the petitioners has submitted that the petitioners are the unfortunate father and mother, respectively, of Hapreet Kaur (deceased), who along with Varinder Kumar @ Gora (husband of Harpreet Kaur) (deceased) has, allegedly committed suicide. He has further submitted that as per the allegations in the FIR, it has been stated that the deceased persons had visited to the house of the petitioners and the petitioners had requested Varinder Kumar @ Gora to make Harpreet Kaur

study further and to arrange a job for her, otherwise they would seek a divorce of Varinder Kumar @ Gora with Harpreet Kaur and on that account, Varinder Kumar @ Gora and Harpreet Kaur had committed suicide. It is further submitted that even in case, said allegations are taken on their face value, then also, no offence under Section 306 IPC is made out inasmuch as the petitioners had never instigated or done any act so as to abet the commission of suicide, as merely requesting the son-in-law to arrange for a job for his wife, would not come within the meaning of abetment so as to constitute the offence under Section 306 IPC. It is further submitted that in fact the petitioners have not committed any such offence and the petitioners have never been involved in any other case. Further submissions have been made that in fact the petitioners and the complainant, who is father of Varinder Kumar @ Gora, have compromised the matter and a petition under Section 482 Cr.P.C. for quashing of FIR on the basis of compromise has already been filed before a co-ordinate Bench of this Court, in which notice of motion has been issued and the matter is pending for adjudication. It is further submitted that the petitioners are in custody since 30.10.2021 and since the challan has not been filed, the trial is likely to take time moreso, in view of the present pandemic.

Learned State counsel has opposed the petition for regular bail and has submitted that in the present case, there are two deaths which have taken place.

Learned counsel for the complainant has submitted that the matter has been compromised and he has no objection in case the present petition for regular bail is allowed.

This Court has heard learned counsel for the parties and

perused the record.

A Co-ordinate Bench of this Court in ***State of Punjab Vs. Kamaljit Kaur alias Bholi and another, 2008 (2) R.C.R. (Criminal) 562***, had observed as under:-

“1. The present revision petition is directed by the State against the discharge of Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala, accused. They were facing trial in case FIR No. 108 dated 31-12-1994 registered at Police Station Nawanshahr under Section 306, IPC. It is stated that Paramjit Singh son of Darshan Singh Hira and his son Amritpal alias Lovely committed suicide and left a suicide note to the effect that his wife Kamaljit Kaur alias Bholi is a woman of bad character. He is fed up with her. Therefore, he along with his son Lovely Amritpal Singh is committing suicide. It is further stated that his wife has illicit relations with three persons namely, Palli of Commando Force, Ludhiana, Kala residing opposite to their house and Ujjal Singh, her real uncle. In the suicide note, he has expressed that in these black days, such bad women are living in the Society. It is further stated that his wife Bholi is a lady of loose character. It is further stated that since Palli has come as a tenant in the house, Bholi has become lady of loose character. It is further stated that Kala had noticed Bholi in objectionable manner with Kala. He wanted in suicide note that if law contemplates action against wedded woman, the law should take its course.

2. On 27.8.1994 at 3.00 p.m. dead bodies of young unknown person aged about 30 years and a child aged about 5- 6 years were found near the maize field. These dead bodies were of Paramjit Singh and his son Amritpal alias Lovely. Postmortem was conducted Visceras were sent to the Chemical Examiner. The Chemical Examiner found the cause of death to be

Aluminum Phosphide. Suicide note was found from the pocket of Paramjit Singh. After completion of investigation, challan was submitted against Kamaljit Kaur alias Bholi and Surinder Kumar alias Kala. The name of Ujjal Singh was placed in column No. 2. Learned Sessions Judge, Jalandhar, while discharging the respondents had observed as under:-

“It cannot be disputed that charge can be framed merely on strong suspicion and the evidence at the time of framing charge is not to be considered meticulously. But I am of the considered opinion that the circumstances of the case are such as, possibly, it cannot be stated that a prima facie case is made out against the accused within the meaning of [Section 306](#) of the Code. Abetment of suicide is punishable Under [Section 306](#) of the Code. [Section 107](#) of the Code defines abetment as under:

107. A person abets the doing of a thing, who first, instigates any person to do that thing; or Secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly, intentionally incite, by any act or illegal omission, the doing of that thing.

Explanation I. A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntary causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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*For arguments sake, if it may be taken that the wife is a woman of easy virtue, even then, it cannot be stated if she had instigated or had aided the commission of suicide. The learned P.P. for the State has not been able to satisfy as to in which manner the commission of suicide has been instigated or aided by the accused. The husband might be feeling harassed or mentally disturbed with the alleged illicit relations of his wife but harassment and the mental disturbance do not constitute the offence of abetment. It looks that the deceased husband was unable to control his wife and he out of frustration has not only committed suicide but has also snuffed the life of his son. The authority Charabhushan Bhimraj Bhushanwar and Ors. (supra) is hardly of any help to the prosecution, I am of the firm view that from the facts of the case no prima facie case is made out against the accused. Though no direct authority is available pertaining to such like facts yet with advantage reference can be made to **Shri Ram v. the State of U.P.** , **Balbir Singh v. The State of Punjab** 1987 (1) Crimes 76; **Wazir Chand v. The State of Haryana** 1989 (1) Crimes 173 : 1989 CriLJ 809; **State of Haryana v. Babu Ram** 1992 (1) Criminal Courts judgments 68 and **Deepak v. State of M.P.** 1984 Cri LJ 767".*

*3. I have perused the order passed by learned Sessions Judge Jalandhar. In Sanju alias **Sanjay Singh Sengar v. State of Madhya Pradesh** 2002 (Supp) 1 JT 248, it was held that the word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation.*

4. The conduct of wife of the deceased though may be conduct of bad wife but was not for the purpose to incite the deceased to commit suicide. It was held by a Division

*Bench of this Court in **Raj Kumar v. State of Punjab** 1983 (1) CLR 660 as under:*

“12. Expression 'instigate' in the Concise Oxford Dictionary is defined as 'urge on incite, bring about by persuasion and in Webster, it has been defined as 'urge forward, provoke with synonyms of stimulate, urge, spur, provide tempt, incite, impel, encourage, animate. The word 'instigate' in common parlance would mean to go, to urge forward or to provoke incite or encourage to do an act.”

5. Every husband or wife may not be living a life of virtue. The conduct of any spouse, if is not upto the expectations of other spouse, and result into commission of suicide by another abetment of suicide cannot be reputed to the other spouse.”

A perusal of the above judgment would show that the said case was also a case under Section 306 of IPC in which two persons i.e., husband of the accused therein and their son had committed suicide and there was a suicide note to the effect that Kamaljit Kaur, wife of the deceased Darshan Singh was a lady of bad character and had illicit relations with three persons and she was caught in an objectionable manner with one of the said three persons and in the suicide note, it was specifically stated that action should be taken against such a woman. Challan was filed against the said lady as well as her paramour. After considering the provisions of Sections 306 and 107 of Cr.P.C., it was observed by the Sessions Court as well as by this Court that even in a case where the wife is alleged of being a woman of easy virtue, then also, it cannot be said that she has instigated or aided the commission of suicide and had observed that in case the husband was

of his wife, then the harassment and mental disturbance would not constitute the offence of abetment. It was further observed that the word 'instigate' denotes incitement or urging to do some drastic or undesirable action and the presence of *mens rea* is a necessary concomitant of instigation. A person may be a bad wife but her conduct was not for the purpose to incite the deceased to commit suicide and, thus, abetment of suicide in such a case cannot be inferred and, thus, the wife in the above-said case was discharged. To the similar effect is the judgment dated 06.12.2012 passed by this Court in the case of ***Maya Vs. State of Punjab*** (supra), in which the wife and the paramour, both being tried and convicted thereupon, were ultimately acquitted. The law laid down in the above-said cases would *prima facie* apply to the facts of the present case.

The question as to whether the offence under Section 306 IPC in the present case is made out on the basis of allegation made in the FIR or not, is highly debatable. The petitioners are old parents of Harpreet Kaur and have been in custody since 30.10.2021 and are not involved in any other case, and the matter is stated to have been compromised and the petition under Section 482 Cr.P.C. for quashing of FIR on the basis of compromise, has already been instituted and in the said petition, a coordinate Bench of this Court has issued notice of motion and the same is pending for adjudication and the challan is to be presented, thus, the trial is likely to take time, more so in view of the pandemic situation.

Keeping in view the above said facts and circumstances, Accordingly, the present petition is allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to

them not being required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

December 07, 2021
Davinder Kumar

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