

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-51603-2021

Date of decision : 16.12.2021

Preeti

... Petitioner

Versus

The State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Sanjeev K.Virk, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail to the petitioner during the pendency of the trial in case FIR No.138 dated 17.08.2021, under Sections 306 and 34 of IPC, registered at Police Station Bullowal, District Hoshiarpur.

The FIR in the present case has been registered on the statement of Gurdeep Kumar (brother of the deceased Ravinder Kumar), who had stated that his brother Ravinder Kumar had a love marriage with the petitioner and from the wedlock, they had a son, namely, Divansh and for the last 2-3 years, the petitioner was having illicit relations with co-accused Ritik Kumar and they used to roam openly which was objected by the deceased Ravinder Kumar. It was further alleged that when the deceased had gone to the house of co-accused Ritik Kumar and told him not to ruin their marriage then said co-accused Ritik Kumar told the deceased that the

deceased should give divorce to the present petitioner and that he would keep the present petitioner and their son after marrying the present petitioner. It was also alleged that the deceased had requested the petitioner several times to come to terms and save their marriage but the petitioner did not pay any heed to the same and kept on compelling the deceased Ravinder Kumar to give divorce and on account of which, the relationship between the petitioner and Ravinder Kumar was not cordial. On 13.08.2021 a quarrel took place between the deceased and the petitioner over the said issue and when the deceased called his in-laws and thereafter, the in-laws took the petitioner along with them then, on 17.08.2021, i.e. after a period of 4 days of said quarrel, the deceased committed suicide.

Learned counsel for the petitioner has submitted that in the present case even as per the prosecution version, the petitioner had never instigated the deceased to commit suicide and only wished to take divorce from the deceased. It is further submitted that no offence under Section 306 IPC is made out inasmuch as the last incident of the alleged quarrel was 4 days prior to the date on which the suicide was committed by the deceased. Reliance has been placed upon a judgment of this Court titled as ***State of Punjab Vs. Kamaljit Kaur alias Bholi and another, 2008 (2) R.C.R. (Criminal) 562***, to contend that in such a situation, the offence under Section 306 of IPC cannot be said to be made out. Further reliance has also been placed on a judgment of a coordinate Bench of this Court dated 06.02.2012 passed in ***CRA-S-1802-SB-2002***, titled as ***Maya Vs. State of Punjab***.

Learned counsel for the petitioner has further submitted that co-accused of the petitioner has been granted regular bail vide order dated

11.11.2021 passed in CRM-M-44014-2021 and the petitioner has been in custody since 09.11.2021 and challan in the present case has been presented and there are 16 witnesses out of which, none have been examined and, thus, the trial is likely to take time moreso, in view of the present pandemic and the petitioner is not involved in any other case.

On the other hand, learned State counsel, has opposed the present petition for grant of regular bail and has submitted that in the present case, a suicide note has also been recovered, wherein, the deceased had mentioned the name of the petitioner in addition to the name of Ritik Kumar and other persons. It is further submitted that against the co-accused, challan has been presented and there are 19 prosecution witnesses and against the petitioner, supplementary challan is to be presented.

This Court has heard the learned counsel for the parties and has gone through the paperbook.

A Co-ordinate Bench of this Court in Kamaljit Kaur's case (supra) 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 imputed 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 wherein two persons i.e., husband

suicide note to the effect that Kamaljit Kaur, i.e. 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 her in accordance with law. 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 feeling harassed or mentally disturbed due to the alleged illicit relationship 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 an unadvisable action and the presence of *mens rea* is a necessary concomitant of instigation. A woman may be a bad wife but her conduct was not for the purpose of inciting 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 a 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 therein and her paramour, both after being tried, were convicted thereupon, but ultimately got acquitted. The law laid down in the above-said cases would *prima facie* apply to the facts of the present case.

Keeping in view the above ratio of law laid down and also the facts and circumstances of the present case, moreso the fact that in the

present case alleged quarrel between the petitioner and the deceased had taken place on 13.08.2021 which was 04 days prior to the date on which deceased had allegedly committed suicide i.e. on 17.08.2021 and there is no allegation that the petitioner instigated the deceased to commit suicide and also the fact that the petitioner has been in custody since 09.11.2021 and challan has been submitted against co-accused Ritik Kumar and there are 19 prosecution witnesses and against the petitioner, supplementary challan is to be filed and thus, the trial is likely to take time more so in view of the present pandemic and the petitioner is not involved in any other case and even co-accused of the petitioner has been granted regular bail vide order dated 11.11.2021 passed in CRM-M-44014-2021, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to her 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 application.

(VIKAS BAHL)
JUDGE

December 16, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No