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

CRM-M-5699-2022

Date of decision : 10.02.2022

Kirandeep Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Subhash Kumar, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.6 dated 08.01.2022 registered under Section 306 of the Indian Penal Code, 1860 at Police Station Lambra, District Jalandhar.

Learned counsel for the petitioner has submitted that the petitioner is a 20 years old young girl against whom the present FIR has been registered by the father of Ajay Kumar on the allegations that the said Ajay Kumar was friendly with the present petitioner and he used to talk to the petitioner on phone and wanted to solemnize marriage with her and on 07.01.2022, the said Ajay Kumar had gone outside the house

while talking to the petitioner on mobile phone and on 08.01.2022, he alleged that his son had committed suicide and it has been alleged in the FIR that the father of the deceased i.e. the complainant had a doubt that his son had committed suicide because of the present petitioner.

Learned counsel for the petitioner has submitted that in the present case, there is no suicide note. It is further submitted that there is nothing to even remotely show that there was any relationship between the petitioner and the said Ajay Kumar. It is argued that even in case, Ajay Kumar wanted to marry the present petitioner and the petitioner refused to marry the said Ajay Kumar and the said Ajay Kumar had committed suicide on that pretext, the same would not make out an offence under Section 306 of IPC. It is further argued that even as per the FIR, it is not even the case of the father of the deceased that the deceased had informed him that he had a liking for the present petitioner or that he wanted to marry the present petitioner or the present petitioner harassed him. Learned counsel for the petitioner has submitted that the petitioner is not involved in any other case. He has relied upon the judgment dated 26.07.2021 passed by the Hon'ble Supreme Court of India in ***Special Leave to Appeal (Crl.) no.7284 of 2017*** titled as ***“Shabbir Hussain vs. The State of Madhya Pradesh & Ors.”***.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has

opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that as per father of the deceased, it is on account of the fact that the present petitioner did not marry the deceased, that the deceased had committed suicide.

This Court has heard the learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court of India in ***Shabbir Hussain's*** case (Supra), has held as under:-

“On 10.09.2014, due to certain matrimonial dispute, Roshan Bee, wife of deceased Firoz Khan moved to her parental home. On 22.09.2014, Firoz Khan committed suicide in his house by consuming poison and also left four suicide notes.

Shabbir Hussain, brother of the deceased – Firoz Khan, preferred complaint i.e. Crime No. 1403/2014, which was registered against respondent Nos.2 to 4 under Section 306/34 IPC. After investigation, chargesheet was filed against respondent Nos.2 to 4 and Trial commenced against respondent Nos.2 to 4. Respondent Nos.2 to 4 preferred Criminal Revision No.725/2016 under Section 397/401 Cr.P.C. before the High Court of Madhya Pradesh at Indore. The High Court allowed the Criminal Revision filed by respondent Nos.2 to 4, aggrieved by which, the petitioner has preferred this special leave petition.

Learned counsel for the petitioner submitted that the High Court committed an error in allowing the Criminal Revision, especially after 10 witnesses had already been examined. He referred to the suicide

notes that were written by the deceased Firoz Khan, to support his submissions that Firoz was harassed by respondent Nos.2 to 4, due to which he took his own life. He argued

that abetment of the offence of suicide by respondent Nos.2 to 4 is prima facie made out as the harassment by respondent Nos.2 to 4 facilitated the act of suicide by the deceased.

In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal(2010) 1 SCC 707].

Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi)(2009) 16 SCC 605].

In the instant case, the allegations against Respondent Nos. 2 and 4 is that they harassed the deceased. There is no other material on record which indicates abetment. The High court did not commit any error in allowing the Criminal Revision.

*Therefore, special leave petition is dismissed.
Pending applications, if any, also stand disposed
of.”*

A perusal of the above judgment would show that the Hon'ble Supreme Court of India had upheld the order passed by the High Court allowing revision petition of the accused persons and while doing so had observed that in order to bring a case within the ambit of Section 306 IPC, there must be a case of suicide and in the commission of the said act, the persons who are stated to have abetted the said commission of suicide, must have played an active role by an act of instigation or by doing a certain act which facilitates the commission of suicide and mere harassment would not constitute the offence under Section 306 IPC. To a similar effect, a coordinate Bench of this Court in ***State of Punjab vs. Kamaljit Kaur alias Bholi and another***, reported as ***2008(2) RCR (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 imputed to the other spouse.”

A perusal of the above reproduced 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 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 unadvisable 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 a similar effect is the judgment dated 06.12.2012 passed by another coordinate Bench of this Court in the case of ***Maya Vs. State of Punjab***, wherein the wife and her paramour, both after being tried and convicted thereupon, were ultimately acquitted.

The Hon'ble Supreme Court of India in a case titled as ***“Gangula Mohan Reddy vs. State of Andhra Pradesh”*** reported as ***(2010) 1 Supreme Court Cases 750*** has held as under:-

“3. The brief facts which are relevant to dispose of this appeal are recapitulated as under: according to the case of the prosecution, the appellant, who is an agriculturist had harassed his agriculture labour (servant) deceased Ramulu by levelling the allegation that he had committed theft of some gold ornaments two days prior to his death. It was also alleged that the appellant had demanded Rs.7,000/- from the deceased which was given in advance to him at the time when he was kept in employment. The prosecution further alleged that the deceased Ramulu could not bear the harassment meted out to him and he committed suicide by consuming pesticides.

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17. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of

the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this court is clear that in order to convict a person under [Section 306 IPC](#) there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide.”

A perusal of the above judgment would also show that it had been observed by the Hon'ble Supreme Court that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without there being a positive act on the part of the accused to instigate or aid in committing of suicide, conviction cannot be sustained and it was further observed that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit the offence and also requires an active act or direct act which led the deceased to commit suicide.

The law laid down in the abovesaid judgments would apply in the present case. It is not in dispute that there is no suicide note of the deceased Ajay Kumar. No overt act has been attributed to the present petitioner to show that the petitioner had instigated or aided the commission of suicide. The FIR has been registered on account of doubt/suspicion and it has not been alleged in the FIR that the deceased had informed his father that he wanted to marry the present petitioner or

was being harassed by her. The petitioner is a young girl of 20 years who has never been involved in any criminal case. Nothing is to be recovered from the present petitioner.

Keeping in view the abovesaid facts and circumstances as well as law laid down in the judgments which have been reproduced hereinabove, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail, subject to her furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation or does not cooperate with the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

10.02.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**