

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-8527-2022

Date of decision : 26.05.2022

Chiku

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Ajay Kumar Dahiya, Advocate
for the petitioner.

Ms.Aditi Girdhar, AAG, Haryana.

Mr.Gautam Kumar, Advocate
for the complainant.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.560 dated 22.09.2021 registered under Sections 306, 34 IPC (Section 506 IPC added later on) at Police Station Kundli, District Sonipat.

Learned counsel for the petitioner has submitted that the petitioner is the brother in law of Anjali who is the wife of the deceased. It is further submitted that the petitioner is in custody since 12.10.2021 and the challan has already been presented and there are 21 prosecution witnesses, none of whom have been examined. It is also submitted that in the present case, neither there is any suicide note, nor any dying declaration and the present FIR has been registered at the instance of the father of the deceased and a perusal of the FIR would show that no offence under

Section 306 IPC is made out, inasmuch as, the only allegation levelled in the FIR against the petitioner was that he was pressurizing the deceased to give Anjali a divorce. It is argued that the said Vipran had committed suicide on 22.09.2021, whereas, Anjali had left her matrimonial house on 15.09.2021. It is also argued that even the said suicide had taken place at village Khumpur whereas the present petitioner is resident of village Rattan Garhi Sardana, District Meerut and even on the date of incident was present in the said village Rattan Garhi. Learned counsel for the petitioner has further submitted that in the present case, as per the supplementary challan, the deceased had also consumed liquor prior to his death. It is further submitted that the petitioner is not involved in any other case.

On the other hand, learned State counsel as well learned counsel for the complainant, have opposed the present petitions for regular bail and have submitted that Anjali had not left her matrimonial house by her own consent, whereas, the petitioner and the co-accused had taken her forcibly from there.

This Court has heard learned counsel for the parties and gone through the paper-book.

Learned counsel for the petitioner has relied up a judgment a Co-ordinate Bench of this Court passed in ***State of Punjab Vs. Kamaljit Kaur @ 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, voluntarily 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 the 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 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 similar effect is the judgment dated 06.12.2012 passed by this Court in ***CRA-S-1802-SB-2002***, titled as ***Maya Vs. State of Punjab***, in which the wife and the paramour, both after being tried and convicted thereupon, were ultimately acquitted.

The petitioner is the brother-in-law of Anjali who is the wife of the deceased. Co-accused Anjali as well as Babita (mother of said Anjali) had filed two separate petitions for regular bail and they have been granted regular bail vide order dated 13.05.2022 passed by this Court in CRM-M-17111-2022 and CRM-M-17119-2022 respectively. A perusal of the FIR would show that Anjali had left the matrimonial home on 15.09.2021 and deceased had committed suicide on 22.09.2021. The suicide has been stated to have been committed in village Toki whereas the petitioner is a resident of village Rattan Garhi Sardana, District Meerut and as per the argument of learned counsel for the petitioner, he was in Rattan Garhi Sardana, District Meerut on the date of the alleged suicide. As per the supplementary statement it has been mentioned that the deceased had consumed liquor

prior to his death and there is no suicide note left by him and the present FIR has been registered on the complaint made by father of the deceased. The petitioner is stated to be not involved in any other case and the petitioner has been in custody since 12.10.2021 and challan has already been presented and there are 21 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take some time. Moreover, the fact, as to whether, in the present case, an offence under Section 306 IPC is made out or not, would be a debatable issue, which will be finally adjudicated during the course of the trial.

Keeping in view the above-said facts and circumstances, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him 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 cases which are only for the purpose of adjudicating the present bail petition.

It is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

(VIKAS BAHL)
JUDGE

May 26, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No