

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-26720-2022(O&M)
Date of decision : 08.07.2022

Gurnam Kaur @ Bholi

... Petitioner

Versus

The State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Gurav Dutta, Advocate
for the petitioner.

Mr.Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

CRM-21890-2022

This is an application filed for grant of leave under Rule 3-A(1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present petition.

In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

CRM-M-26720-2022

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.186 dated 25.08.2021 registered under Section 306 IPC at Police Station City Rajpura, District Patiala.

Learned counsel for the petitioner has submitted that the petitioner is a 56 year old lady and has been in custody since 11.04.2022

and the challan in the present case has already been presented and there are 20 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time and the petitioner is not involved in any other case. It is further submitted that a perusal of the FIR would show that no offence under Section 306 IPC much less against the petitioner is made out inasmuch as it is not even the case of the prosecution that on the date when the deceased had committed suicide, there was any interaction with the present petitioner in fact there is no specific allegation against the present petitioner and only one line vague allegation has been made that Sarabjit Kaur and the present petitioner who is the mother of Sarabjit Kaur as well as other family members used to blackmail Lalit Kumar. It is also submitted that no date and time with respect to said allegation has been made. It is stated that the petitioner has been implicated solely on account of the fact that she is the mother of Sarabjit Kaur. It is further stated that Balkar Singh, who has also been made accused in the present case, had already applied for anticipatory bail and this Court vide order dated 05.05.2022 passed in CRM-M-9355-2022 has been pleased to grant anticipatory bail to said Balkar Singh. Reliance has been placed upon a judgment of this Court titled as “*State of Punjab Vs. Kamaljit Kaur alias Bholi and another*”, reported as *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 the 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 State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that as per the FIR, on

24.08.2021 when Lalit Kumar had come back from Manali then he received a phone call from Sarabjit Kaur and said Lalit Kumar was frightened and thereafter on 25.08.2021 said Lalit Kumar had gone out of the house and called up the complainant to state that he was being blackmailed by Sarabjit Kaur and thereafter committed suicide. It is further submitted that the present petitioner is the mother of Sarabjit Kaur and it has been mentioned in the earlier part of the FIR that Sarabjit Kaur and the present petitioner with other family members used to blackmail Lalit Kumar and thus, the present petitioner does not deserve the concession of regular bail.

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

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, 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 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 IPC, 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 the similar effect is the judgment dated 06.12.2012 passed by a coordinate Bench of 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.

In the present case, the petitioner is a 56 year old lady, who is not involved in any other case and has been in custody since 11.04.2022 and

the challan in the present case has already been presented and there are 20 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time. On the date when Lalit Kumar had committed suicide and even on the date prior to the same, no overt act had been attributed to the present petitioner which would constitute the offence of abetment. In fact as per the FIR, only vague allegations have been levelled against the present petitioner to the effect that she along with Sarabjit Kaur and other members used to blackmail Lalit Kumar but no date and time of any incident has been mentioned. The co-accused of the petitioner Balkar Singh has already been granted anticipatory bail by this Court vide order dated 05.05.2022 passed in CRM-M-9355-2022.

Keeping in view the above said facts and circumstances and also in view of the law laid down in the above said judgments, 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.

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

July 08, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No