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

CRM-M-34119-2022 (O&M)

Date of Decision: 26.08.2022

Suresh Nath

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. P.R. Yadav, Advocate,
for the petitioner.

Mr. Naveen S. Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.129, dated 23.05.2021, under Sections 302/328 IPC (Sections 302/328 IPC have been deleted and Sections 306/377 IPC have been added), registered at Police Station Kosli, District Rewari (Haryana).

The facts of the case are as follows:-

The aforesaid FIR was got lodged by the complainant, namely, Subhash Kumar s/o Ram Kishan by stating that he has a son, namely, Ritik, who is of the age of 19-20 years and is a student of B.A. Second year in Jatusana College. On 23.05.2021, at about 8.00-9.00 a.m. in the morning, he had taken Rs.500/- from home and went to take medicine from doctor in Gudiyani on his motorcycle No.HR-43-7193, he did not reach home till

evening and could not be found. While searching him in the morning, boys of his family reached near the hills Bhuriwas near Gudiyani, then the bike of my son was found up on the hill and his dead body was found down the hill in the bushes lying backward and near the motorcycle, they found a liquor bottle, which contained liquor, Namkeen and at a little distance one slipper and two pouches of poison used in preserving wheat were found lying open. Some powder from that pouch was also found lying on the ground. The complainant and his family members identified the body of his son Ritik. It was found around 25-30 meter away and in a deep gorge. He had a doubt that some unidentified persons must have given poison to him and then tried to deface his face by hitting on his forehead and face with stone and thereafter, must have thrown him in the deep gorge.

The police registered an FIR under Sections 302/328 IPC initially but thereafter on 25.05.2021 i.e. two days after the body was found, there was a discovery of a long handwritten suicide note from the house of the complainant. This suicide note was sent to the Forensic Science Laboratory which gave report in the month of April that the handwriting of the deceased matched with his admitted handwriting and therefore, the police deleted Section 302/328 IPC and added Section 306/377 IPC, since the handwritten suicide note was recovered after two days.

The learned counsel for the petitioner advanced the following arguments:-

(i). The provision of Section 377 IPC has been added but in the Postmortem Report, there was no evidence of Sodomy having been

committed on the deceased boy.

(ii). As per the FIR and the prosecution story, near the motorcycle on the hill, one bottle containing liquor, Namkeen, slipper and two pouches containing chemical used for preserving the storage of wheat were found which would show that there was not one person but some other persons were also there. Therefore, it was not a case of suicide, but it was a case where the deceased was killed by some other persons.

(iii). The body of the deceased had injuries which were on the whole body, and therefore, it could not have been a case of suicide but of killing by some other persons.

(iv). As per Para 15 of the reply/affidavit filed by the State, the deceased had visited one Baba, namely, Manjish Nath on 30.03.2021, whereby as per the aforesaid Baba, the deceased was having in his possession Sulphas, which is a poisonous substance. Therefore, it is evident that the deceased had confided with the aforesaid Baba, namely, Manjish Nath, who is also known as 'Peepal Wala Baba' and in fact the offence is likely to have been committed by the aforesaid Baba and not by the present petitioner.

(v). Even if the contents of the suicide note are taken to be true, the deceased had only stated that the petitioner had done wrong with him, but it could have been a mere touching of the body and the deceased which might have been construed as some wrong impression, and therefore, it cannot be said that the petitioner had committed a wrong or an immoral act with the deceased.

(vi). Learned counsel for the petitioner also submitted that the ingredients of Sections 306/107 IPC were not fulfilled, since it was not a case of instigation for committing the suicide.

On the other hand, Mr. Naveen S. Panwar, learned Deputy Advocate General, Haryana has submitted that a status report has been filed by the Deputy Superintendent of Police, Rewari, District Rewari in the present case and the Investigating Officer, namely, Prince is also present in the Court for assistance. He has submitted that so far as the first argument raised by the learned counsel for the petitioner is that in the Postmortem Report, there was no evidence of Sodomy, the same is not sustainable in view of the fact that the occurrence of wrongful act as stated in the suicide note itself was of 10.03.2021, whereas the body of the deceased was found on 25.05.2021. Therefore, the evidence of Sodomy could not have been present after a gap of more than two months. He further submitted that it is a case where a perusal of the suicide note itself shows that after committing the wrongful act with the deceased on 10.03.2021, the deceased was having intense psychological and mental trauma, which continued till the time of his death. He further submitted that so far as the recovery of the articles from the hill at the time of recovery of the body is concerned, the same is a matter of fact that a motorcycle, one bottle containing liquor, Namkeen, slippers and two pouches containing chemical were found but it cannot be presumed from the recovery of the aforesaid articles that there were some other persons present at the time of incident.

He further submitted that so far as the arguments raised by the

learned counsel for the petitioner that the injuries were on the whole body of the deceased were seen, learned DAG, Haryana has submitted that there were multiple injuries but majority of the injuries were grazed abrasions, which suggested falling from the cliff of the hillock but there was no injury by way of strangulation in the viscera report and the fact that liquor bottle was also lying nearby, it was apparent that the deceased had jumped down from the cliff of the hillock. He further submitted that so far as the plea raised by the learned counsel for the petitioner that when the deceased visited the other Baba, namely, Manjish Nath @ Peepal Wala Baba on 30.03.2021, the deceased was having Sulphas would not mean that the aforesaid Baba Manjish Nath was a participant in the offence. He also submitted that so far as the arguments raised by the learned counsel for the petitioner that it could have been wrong message to the deceased with regard to the touching of the body by Baba, is also not sustainable in view of the fact that a perusal of the suicide note would show that by doing of the wrongful act by the petitioner, the deceased had faced acute psychological and mental trauma, which led him to commit suicide.

The learned DAG, Haryana, while referring to Para 4 of the reply, submitted that the postmortem examination of the dead body was conducted by the Board of Doctors, who after examining the dead body, opined that the cause of death was ante-mortem head injuries and their complications. Viscera and blood samples were preserved by the medical experts and so were the nails scrapings and clippings for the purpose of detection of presence human epithelial cells and foreign DNA, if any.

While further referring to the affidavit filed by the State, he submitted that on 25.05.2021, during the course of the inspection of the house of the deceased, the complainant had produced from the drawer kept in the room of the deceased, a suicide note containing six pages, which was taken into possession. Thereafter, for the purpose of comparison and with a view to get the admitted handwriting of the deceased, the Controller of Examination, Indra Gandhi University, Rewari was approached and he had produced the exam paper of BA-II year 3rd Semester of Subject Hindi in original, written by the deceased which was taken into possession, and thereafter, the suicide note as well as the exam paper were sent for the purpose of comparison of handwriting to the forensic experts. The Viscera Analysis Report was given by the FSL which opined the presence of Aluminium Phosphide in stomach, parts of small and large intestine, liver, gall bladder, spleen, kidney and the blood. The mobile phone which was recovered from the person of the deceased was sent for forensic analysis to the Digital Investigation Training and Analysis Centre, Gurugram and the entire contents of the hard-drive of the mobile phone were restored and were handed over to the investigating agency in USB drive. When the USB drive was analyzed, it was found that the deceased had clicked the photographs of the suicide note in his mobile and it was further found that some of the sentences which had been erased by a pen, were already intact in a written state in the pictures of the suicide note. So far as the report of the handwriting comparison is concerned, the same was received from the FSL and consequent thereto, in wake of the opinion of the handwriting

examiner to the effect that the suicide note was written by the deceased, offences punishable under Sections 302/328 IPC were dropped and those punishable under Sections 306/377 IPC were added on the basis of contents of the suicide note.

Learned DAG, Haryana further submitted that apart from the same, the call detail records of the cell phone of the deceased were obtained and analyzed and the presence of the deceased in the Gurawara area was found on 10.03.2021. Since the suicide note also had a reference to one Manjish nath, who was also priest of the temple in some other place, he was also joined in the investigation and was questioned, who made a statement that on 30.03.2021, the deceased came to him crying and had narrated his ordeal apprising that the petitioner had done bad act with him and the deceased was also having Sulphas in his possession. The friends and acquaintances of the deceased also joined investigation. The learned DAG, Haryana has further submitted that in the suicide note which was recovered from the drawer of the room of the deceased had number of erasings by ink at different lines on different pages. However, when the photographs of the suicide note were recovered from the mobile phone of the deceased, those erasings by ink were not there and from the photographs it could be seen that the same were taken at not one time but at regular interval. He also submitted that this goes into show that some interpolations have been made thereafter.

The learned DAG, Haryana, on specific instructions from I.O., who is present in the Court, submitted that the petitioner had been

absconding from more than one year and the police is not able to join the other persons, who were residing at the *Ashram* of the petitioner who are the followers as they are supporting the petitioner and are rather giving different statements by stating that the petitioner is innocent. He also submitted that the custodial investigation of the petitioner is extremely necessary in the present case as the investigation process is being hampered due to the influence of the petitioner on his disciples and various other persons in the Ashram where investigation is required to be carried on. He further submitted that the handwriting of the suicide note has already been compared with the admitted handwriting of the deceased and as per the FSL Report, it is in the same handwriting. As per the suicide note, direct allegations have been levelled upon the petitioner that on 10.03.2021, the petitioner had committed a wrong act with the deceased and thereafter, there had been a continuous pressure upon the petitioner and he was also asked to stay in the Ashram thereafter. Apart from the same, the petitioner had also used various kinds of *Mantras* for hypnotizing the deceased and over a period of time, the situation has come to such an extent that he had stated in the suicide note that he does not want to live as there is a lot of pressure upon him, since his life was destroyed by the petitioner and that he has no other alternative but to die as he has already lost. In the concluding part of the suicide note, the deceased had also written that he wanted to live but it is just like he has been murdered and the murderer is the Baba of Gurawara (who is the present petitioner). It was further stated in the suicide note that his death was destined in the month of March itself but he could

survive after seeing his family members. Learned DAG, Haryana further submitted that from the perusal of the suicide note, it is apparent that after the committing of wrongful act by the petitioner upon the deceased, he felt insulted which hurt his self-esteem and dignity and these circumstances led him to commit suicide. He further submitted that it has been so held by the Hon'ble Supreme Court in “***State represented by C.B.I. Vs. Anil Sharma***”, (1997) 7 SCC 187, that the reason for custodial investigation is to have qualitative interrogation for the purpose of elicitation of truth and therefore, in view of the aforesaid facts and circumstances, the custodial interrogation of the petitioner is required.

I have heard the learned counsel for the parties.

As per the learned DAG, Haryana, the petitioner has been absconding from more than one year. The suicide note which is a handwritten suicide note consisting of six pages in Hindi language was also shown to this Court and also to the learned counsel for the petitioner. As per the suicide note, the deceased has put all the blame on the petitioner by narrating from 10.03.2021, when wrongful act was committed by the petitioner upon the deceased, and thereafter, how he underwent psychological and mental trauma which had hurt his self-esteem and dignity and the circumstances which led to the commission of suicide. The handwriting of suicide note has also been compared by the FSL and it was found that the handwriting matched with the admitted handwriting of the deceased.

The argument raised by the learned counsel for the petitioner

that in the postmortem report there was no evidence of Sodomy, is not sustainable in view of the fact that the postmortem was conducted after a period of about 2½ months. Another argument raised by the learned counsel for the petitioner was that from the recovery of various articles on the spot it should be inferred that there was some other persons also on the spot which might have committed the murder of the deceased, also appeared to be hypothetical argument in view of the fact that as per the FIR there was a recovery of one bottle containing liquor, Namkeen, slipper and two pouches of chemical. Another argument raised by the learned counsel for the petitioner was that the injuries were found on the whole body, has been answered by the learned State counsel by stating that most of the injuries were grazed abrasions, which suggested falling from the cliff of the hillock but there was no injury of strangulation. So far as the argument raised by the learned counsel for the petitioner that the deceased might have been conveyed wrong message because some times mere touching of the body can create a wrong impression would also not be helpful to the petitioner in view of the language used in the suicide note.

So far as the other argument raised by the learned counsel for the petitioner that the ingredients of Sections 306/107 IPC were not fulfilled, reference may be made to judgment of Hon'ble Supreme Court in **“Praveen Pradhan Vs. State of Uttaranchal and another”**, (2012) 9 SCC 734. In that case, the FIR was lodged by the brother of the deceased by alleging that the accused was for long time attempting to compel the deceased to indulge in several wrongful practices at the workplace and

owing to constant humiliation and ill-treatment meted out to the deceased, he committed suicide and from the suicide note also, the deceased had held the accused responsible for his death. The Hon'ble Supreme Court observed that the instigation has to be gathered from the circumstances of a particular case and no straight jacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be a direct evidence in regard to instigation which may have direct nexus to suicide, and therefore, in such like case, an inference has to be drawn from the circumstances. Para 18 of the aforesaid judgment is reproduced as under:-

“18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 Cr.P.C.”

Furthermore, Hon'ble Supreme Court in “*Ude Singh and others Vs. State of Haryana*”, (2019) 17 SCC 301, in a case pertaining to allegations by the complainant that his unmarried daughter was continuously abused and thereafter, she committed suicide, it was observed by the Hon'ble Supreme Court that in case of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. If the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. Para 16 and 16.1 are reproduced as under:-

“16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to

commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or

snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.”

This Court does not wish to observe anything on the merits of the case, since the present case is only pertaining to prayer for grant of anticipatory bail. However, for the purpose of considering the grant of anticipatory bail, the Court has to strike a balance between liberty of an individual on the one hand and various other factors on the other hand, namely, the possibility of accused of absconding, influencing any witness, tampering with any evidence, hampering the investigation process or such like other relevant factors. In the present case, the learned DAG, Haryana has specifically submitted that on the handwritten suicide note which was recovered, there were erasings by ink on certain lines on different pages, but when the photographs of suicide note were found on the mobile phone of the deceased, there were no such erasings or interpolations, which raises suspicion of tampering with the evidence. The learned DAG, Haryana also specifically submitted that the investigation of the case was being hampered because nobody could have been joined from the Ashram of the petitioner

as they are not only resisting but they are also filing complaints to the police by stating that the petitioner is innocent and he has been falsely implicated. As per the suicide note, the wrongful act, if any, was done in the Ashram on 10.03.2021, and thereafter, the deceased was under constant psychological and mental trauma and at the end of the suicide note he even stated that he does not wish to live because of pressure made upon him and in fact his death will be just like in the nature of murder and the murderer will be Baba of Gurawara (Petitioner).

In view of the aforesaid facts and circumstances, as well as gravity and magnitude of seriousness of the case, this Court is of the considered view that it is a fit case where the custodial interrogation of the petitioner is required and the petitioner does not deserve the concession of anticipatory bail.

Consequently, finding no merit in the present case, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

26.08.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |