

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-48175-2021

Date of decision : 21.01.2022

Primaljeet Kaur and another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Manjinder Singh Saini, Advocate
for the petitioners.

Mr.Sukhbeer Singh, AAG, Punjab.

Mr.Parminder Singh, Advocate
for the complainant.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.237 dated 05.10.2021 registered under Sections 306/34 IPC at Police Station City Phagwara, District Kapurthala.

On 17.11.2021, this Court was pleased to pass the following order:-

“Learned counsel for the petitioners inter alia contends that in the present case, even if the allegations are taken on face value, then also, no offence under Section 306 of IPC is made out. It is argued that as per the FIR, the alleged incident had taken place 4 days prior to the date on which the son of the complainant had committed suicide. It is further argued that in fact,

*the said deceased was a drug addict and has thus, committed suicide on account of his own mental health issues. He has also submitted that the third person in the video is Kulraj Singh son of Kirpal Singh. He has relied upon a judgment passed by the Coordinate Bench of this Court in case titled **State of Punjab Vs. Kamaljit Kaur alias Bholi and another** reported as **2008(2) RCR (Criminal) 562** to contend that in such a situation, offence under Section 306 of the IPC cannot be said to be made out.*

Notice of motion.

On asking of the Court, Mr. N.K. Banka, DAG, Punjab, appears and accepts notice on behalf of State of Punjab and Mr. Parminder Singh, Advocate appears on behalf of the complainant and seek time to get instructions.

Adjourned to 20.01.2022.

In the meantime, in the event of arrest, the petitioners shall be released on interim bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioners shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.”

Learned counsel for the petitioners has submitted that the petitioners have joined the investigation.

Learned State counsel, on instructions from ASI Gurmukh Singh has submitted that the petitioners have joined the investigation and are not required for further investigation.

Learned counsel for the complainant has opposed the application for anticipatory bail and has submitted that there is video

Manpreet Singh has specifically named the petitioners, who are his wife and mother-in-law, as being persons responsible for his committing suicide. It is further submitted that the deceased was not a drug addict.

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

A coordinate Bench of this Court in case titled as “**State of Punjab Vs. Kamaljit Kaur alias Bholi and another**” reported as **2008(2) RCR (Criminal) 562** has held 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 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

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 the 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 and the paramour, both being tried and convicted thereupon, were ultimately acquitted.

A perusal of the FIR in the present case would show that the same was registered on the complaint of Charanjit Singh who had stated that his son Manpreet Singh (deceased) was residing separately from him on the upper floor of the house and two months before the festival of Raksha Bandhan, the mother and grand mother of the petitioner no.1 had taken petitioner no.1 to Bhattewad along with his grandson and four days prior to the alleged incident, deceased Manpreet Singh had gone to take back said Primaljeet Kaur and his son but however, since they did not return, he was

very disturbed and had thus committed suicide. It is not in dispute that petitioner no.2 did not reside in the same house as deceased Manpreet Singh. Even petitioner no.1 had been residing separately since a period of two months preceding the deceased's suicide even as per the allegations in the FIR. The alleged incident when the deceased had gone to bring petitioner no.1 and his son back to his house even as per the FIR, had also occurred 4 days prior to the deceased's suicide.

In the above said facts and circumstances, the question as to whether Section 306 IPC is attracted or not, would be a matter of trial. The petitioners are females and have already joined the investigation and are not required for further investigation as per the stand of the State. Thus, the present petition for anticipatory bail is allowed and the interim order dated 17.11.2021 is made absolute.

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 petition.

(VIKAS BAHL)
JUDGE

January 21, 2022

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No