

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(205)

CRM-M-53857-2021

Date of decision: - 06.01.2022

Hans Raj

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Jitender K. Sehrawat, Advocate,
for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 of Cr.P.C. for grant of regular bail in FIR No.36 dated 20.01.2021, under Section 306 IPC, registered at Police Station Narnaund, District Hisar.

Learned counsel for the petitioner has submitted that the petitioner is a 73 year old person and has been falsely implicated in the present FIR on the basis of the statement of daughter-in-law of the deceased-Rajender, namely, Santosh, which has been made only in order to usurp the land of the petitioner. It is submitted that the said Rajender,

father-in-law of the complainant, had died on 17.05.2017 and at that time no complaint was filed before any authority and no postmortem was also conducted on the said deceased. The present FIR has been registered on 20.01.2021 after a delay of 3 ½ years. It is submitted that in fact the present petitioner as well as the deceased, who are brothers, have jointly filed a suit for partition in the year 2012 and another civil suit was even filed by the petitioner restraining the deceased from interfering in the peaceful possession of the petitioner and the same was decreed on 17.10.2013 and the appeal therefrom was also dismissed. It is argued that a perusal of the FIR would show that it has been alleged that some sale deed has been got executed from the deceased under the influence of liquor and it has further been alleged that the land closer to the road has been taken by the petitioner. In this regard, it is submitted that qua the same land, civil suit of the petitioner has been decreed in his favour and even if the said allegations are taken to be true, then also they would still not constitute an offence punishable under Section 306 IPC as the petitioner has not instigated the deceased to commit suicide. It is further stated that the FIR has been registered apparently by the daughter-in-law in order to grab the property of the present petitioner. It is also submitted that the petitioner is not involved in any other case.

Learned State counsel on the other hand has opposed the present bail petition for regular bail and has submitted that although the death had taken place on 17.05.2017, but the complainant had moved a complaint on 08.09.2017 after she had found the suicide note and after the suicide note was verified, the present FIR has been registered. It is further

submitted that from the FSL report it has come out that the suicide note is in the handwriting of the deceased and it is thereafter, the petitioner was arrested on 27.11.2021.

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

A Co-ordinate Bench of this Court in case titled as **State of Punjab Vs. Kamaljit Kaur alias Bholi and another, reported as 2008 (2) R.C.R. (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 Shrim 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 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 a Co-ordinate Bench of this Court in the case of Maya Vs. State of Punjab [CRA-S-1802-SB-2002], in which the wife and the paramour, both being tried and convicted thereupon, were ultimately acquitted.

It is not in dispute that the said Rajender, father-in-law of the complainant, had expired on 17.05.2017 and without any postmortem report, the complainant party had performed the last rites of the said Rajender. The present FIR has been registered after a period of 3½ years from the date of said death. Further, the argument of learned counsel for the petitioner that the petitioner could not be stated to be in illegal possession of any land cannot be brushed aside.

In the present case, whether on the allegations mentioned in the FIR Section 306 of IPC is attracted or not, is a matter of trial. In view of the facts that the petitioner is a 73 year old person, who has been in custody since 27.11.2021 and the trial is likely to take time moreso, in view of the pandemic situation and the petitioner is not involved in any other case, the present petition for grant of regular bail deserves to be allowed.

Accordingly, 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 / CJM, and subject to him not being required in any other case.

It is however made clear that in case the petitioner influences any witness then it would be open to the State to move an application for cancellation of bail of the petitioner.

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.

January 06, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes